

POLICY SERVICES

ADVISORY

Volume 7, Number 1

February 2010

CONTENTS

Policy Advisory No. 69

GBEB—Staff Conduct
(Standards of Professional Conduct)

Policy Advisory No. 70

JFC —Student Withdrawal
from School/Dropouts

Policy Advisory Discussion

In keeping with the intention of New Mexico Policy Services to advise members of Policy Services on maintaining up to date policy manuals the following changes are recommended as complying with the New Mexico Statutes and Administrative Code. Though they may seem minor in the scheme of things, these changes inform school boards and readers of the policy manual of the standards and requirements under which school systems must function.

GBEB—Staff Conduct (Standards of Professional conduct), as may be seen in the attached copy of NMAC 6.60.9.9 the Public Education department made modifications to the Standards of Professional Conduct. The significance of the major changes are that they place limits on certain uses of school technology and the Internet, give a description of unprofessional conduct, and require reporting of inappropriate contact with a student or employee within thirty (30) days of knowledge of same. There are other minor changes in wording but these do not have the impact of those mentioned.

JFC —Student Withdrawal from School/Dropouts, has been changed to reflect the change in Statute regarding 22-12-2 NMSA (Compulsory School Attendance). This statute was revised three times within the year in 2007 raising the compulsory

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

attendance requirements to include children up to eighteen years of age unless they have a high school diploma or a general education development certificate. Among the previous versions there had been the option to withdraw at age seventeen which is now unavailable.

Policy Services recommends the adoption of these policies to comply with statutory and regulatory implementation.

If you have any questions, call Policy Services at (505) 469-0193. Ask for Donn Williams, Policy Services Director. E-mail address, [nmsbapolicy@cox.net].

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

STAFF CONDUCT

(Standards of Professional Conduct)

Preamble

We, licensed New Mexico educators acknowledge that ethical values in our schools cannot exist without ethical leadership. It is our ultimate goal to educate children so that they may become productive citizens; we understand that our guidance and ability to provide choices has a profound effect on reaching this goal. In affording students and each other choices, we agree to consider the consequence of each choice, the moral value best exemplified by the recommended choice and ~~a reflection~~ on ~~how we would view~~ the choice if it were applied to us. These principles apply equally to all licensed educators in all schools except where they are uniquely applicable to public schools or where they conflict with principles of religious freedom.

Moral values are to ethical leadership what years of experience are to a successful educator. The former sets the stage for success of the latter. Abstract principles that espouse excellence do not easily equate into simple behavioral maxims. We are certain that some foundational concepts can be embraced because they truly celebrate desirable moral values. These concepts are: respect for one's self and others, honesty and openness, the delicate balance between absolute freedom and safety, the equally delicate balance between confidentiality and the right to know, equality of opportunity, fairness to all and personal integrity.

In the final analysis it is our consistent ethical leadership that wins the most allies and produces the best results. Not only does this code highlight our professional responsibilities, it stimulates us to discuss the professional implications of our ethical choices and ethical recommendations, causes us to assess and reassess our application of moral values, and sets forth concrete behaviors appropriate for education professionals. We are committed to this code and understand that it provides minimally accepted standards of professional conduct in education.

Standard I – Duty to the student. We endeavor to stimulate students to think and to learn while at the same time we seek to protect them from any harm. Ethical leadership requires licensed educators to teach not only by use of

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

Policy Services

Page 2 of 2

pedagogical tools, but by consistent and justifiable personal example. To satisfy this obligation, we:

- shall, in compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g, 34 C.F.R. Part 99), the Individuals with Disabilities Education Act (20 U.S.C. 1401 *et seq.*, 34 C.F.R. Part 300), the Mental Health and Developmental Disabilities Code (Section 43-1-19 NMSA 1978), the Inspection of Public Records Act (Chapter 14, Article 2 NMSA 1978), the Public School Code (Section 22-1-8 NMSA 1978) and the Children's Code (Sections 32A-2-32, 32A-4-3 NMSA 1978), withhold confidential student records or information about a student or ~~the student's~~ personal and family life unless release of information is allowed, permitted by the student's parents/legal guardian or required by law;
- shall not discriminate or permit students within our control, supervision or responsibility to discriminate against any other student on the basis of race, color, national origin, ethnicity, sex, sexual orientation, disability, religion or serious medical condition;
- shall avoid using our position as a licensed school employee to exploit or unduly influence a student into engaging in an illegal act, immoral act or any other behavior that would subject a licensed school employee or student to discipline for misconduct whether or not the student actually engages in the behavior;
- shall tutor students only in accordance with local board policies if any, only after written permission from the student's parents/legal guardian and only at a place or time approved by the local school or the student's parents/legal guardian;
- shall not give a gift to any one (1) student unless all students situated similarly receive or are offered gifts of equal value for the same reason;
- shall not lend a student money except in clear and occasional circumstances as where a student may go without food or beverage or be unable to participate in a school activity without financial assistance;
- shall not have inappropriate contact with any student, whether or not on school property, which includes but is not limited to:
 - all forms of sexual touching, sexual relations or romantic relations;
 - inappropriate touching which is any physical touching, embracing, petting, hand-holding or kissing that is unwelcome by the student or is otherwise inappropriate given the age, sex and maturity of the student;

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

- any open displays of affection toward mostly-boys or mostly-girls;
- offering or giving a ride to a student unless absolutely unavoidable as where a student has missed their usual transportation and is unable to make reasonable substitute arrangements;
- shall not interfere with a student's right to a public education by sexually harassing a student or permitting students within our control, supervision or responsibility to sexually harass any other student, which prohibited behavior includes:
 - making any sexual advances, requests for sexual favors, repeated sexual references and any name calling by means of sexual references or references directed at gender-specific students, any other verbal or physical conduct of a physical nature with a student even where the licensed educator believes the student consents or the student actually initiates the activity and any display/distribution of sexually oriented materials where students can see them;
 - creating an intimidating, hostile or offensive work/school environment by at a minimum engaging in any of the prohibited behaviors set forth at Paragraph (7) of this subsection or Subparagraph (a) of this paragraph.

Standard II – Duty to the profession. The education profession has been vested by the public with an awesome trust and responsibility. To live up to that lofty expectation, we must continually engender public confidence in the integrity of our profession and must strive consistently in educating the children all of whom will one day shape the future. To satisfy this obligation, we:

- shall not make a false or misleading statement or fail to disclose a material fact in any application for educational employment or licensure;
- shall not orally or in writing misrepresent our professional qualifications;
- shall not assist persons into educational employment whom we know to be unqualified in respect to their character, education or employment history;
- shall not make a false or misleading statement concerning the qualifications of anyone in or desiring employment in education;
- shall not permit or assist unqualified or unauthorized persons to engage in teaching or other employment within a school;

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

- shall not disclose personal, medical or other confidential information about other educational colleagues to anyone unless disclosure is required or authorized by law;
- shall not knowingly make false or derogatory personal comments about an educational colleague, although ~~First Amendment~~ protected comments on or off campus are not prohibited;
- shall not accept any gratuity, gift, meal, discount, entertainment, hospitality, loan, forbearance, favor or other item having monetary value whose market value exceeds one hundred dollars (\$100) ~~and which compromises the integrity of the licensed educator~~, excluding approved educational awards, honoraria, plaques, trophies and prizes;
- shall avoid conduct connected with official duties that is unfair, ~~or is~~ improper, illegal or gives the appearance of being improper or illegal;
- shall not sexually harass any school employee, any school visitor or anyone else we might encounter in the course of our official duties, which includes:
 - making any sexual advances, requests for sexual favors, repeated sexual references and name calling by means of sexual references or references directed at any gender-specific individuals named above;
 - making any other verbal or physical conduct with any of the above-named individuals even where the licensed educator believes they consent or they actually initiate the activity;
 - displaying or distributing any sexually oriented materials where the above-named individuals can see them;
 - creating an intimidating, hostile or offensive work/school environment by ~~at a minimum~~ not engaging in any of the prohibited behaviors set forth above;
- shall educate oneself at least annually about avoiding sexual harassment by either attending periodic training, reviewing sexual harassment literature or the EEOC guidelines found at Title 29 Code of Federal Regulations Part 1604 (29 C.F.R. § 1604.1 *et seq.*) or contacting appropriate school human resources personnel;
- shall not engage in inappropriate displays of affection, even with consenting adults, while on school property or during school events off campus;

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

- shall not without permission of a supervisor use public school property to conduct personal business or our personal affairs;
- shall use educational facilities and property only for educational purposes or purposes for which they are intended consistent with applicable policy, law and regulation;
- shall not discriminate against any school employee, or any other person with whom we have any dealings or contact in the course of our official duties, on the basis of race, color, national origin, ethnicity, sex, sexual orientation, disability, religion or serious medical condition;
- shall not engage in any outside employment:
 - the performance of which conflicts with our public school duties as where a licensed educator takes a private job that would require performance in the very school district where he or she is employed;
 - where we use confidential/privileged information obtained from our public school employment as part or all of our private employment duties;
 - that impairs our physical ability to perform our school duties;
- shall not, with the intent to conceal/confuse a fact, change or alter any writing or encourage anyone else to change or alter any document:
 - in connection with our official school duties;
 - in connection with another licensed person's official school duties;
 - in connection with any standardized or non-standardized testing;
 - in connection with any school application or disclosure process;
 - in connection with any writing submitted to the department of education related to our initial or continued licensure, including endorsements;
- shall not in connection with any ~~secretary~~-approved teacher test knowingly make any misrepresentations about one's identity or engage in any false or deceptive acts of test-taking or test-registering;
- shall not engage in any conduct or make any statement:
 - that would breach the security of any standardized or non-standardized tests;

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 would ignore administering portions or the entirety of any standardized or non-standardized testing instructions;
 - that would give students an unfair advantage in taking a standardized or non-standardized test;
 - that would give a particular school or a particular classroom an unfair advantage in taking a standardized or non-standardized test;
 - that would assist students in obtaining services or benefits to which they do not qualify or are not entitled;
- shall not, when on school property or off campus while representing the school or attending a school function, engage in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the peace.
 - shall not hold, or continue to hold, employment for which educator licensure or certification is required when the individual knew, should have known or is informed by the PED, that the individual does not hold the required credentials; and
 - shall not use school information technology equipment, hardware, software or internet access to view, download, display, store or print pornographic images or advertisements, nude images, or sexually explicit depictions or language;
 - shall not engage in unprofessional conduct, which conduct shall include but not be limited to the following:
 - striking, assaulting or restraining a student for no valid reason;
 - using any written or spoken words in public schools or at school events that are inflammatory, derogatory or otherwise demonstrate a bias against a person or group, on the basis of their race, religion, culture, ethnicity, sexual preference, sexuality or physical disability;
 - bringing firearms onto school property or possessing them on school property, except with proper authorization;
 - possessing or consuming alcohol beverages at school;
 - possessing or using illegal drugs;
 - being under the influence of alcohol or illegal drugs at school;

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

- actively obstructing an investigation into the possible unethical or illegal conduct of a school employee; and
- engaging in favoritism or preferential treatment toward any school employee or applicant in regards to that individual's hiring, discipline, terms of employment, working conditions or work performance due to that individual's familial relationship with the licensee;
- shall report any knowledge of inappropriate contact, as provided in this policy with a student or other school employee to the local school authority within 30 days of obtaining such knowledge.

Sanctions

The standards of professional conduct establish minimal standards of accepted professional conduct with which all educators and administrators are required to comply. Therefore, the Secretary of Education through the professional licensure unit ("licensure unit") of the public education department (PED), may revoke or suspend the licensure of any person, or may deny applications for licensure or relicensure to any person, who is within the scope of this regulation and who after hearing is found to have failed to comply with one (1) or more of the enumerated provisions of the standards of professional conduct set forth in Section 6.60.9.9 NMAC, exclusive of the preamble.

In General

All employees of the District are expected to conduct themselves in a manner consistent with effective and orderly education and to protect students and District property. No employee shall, by action or inaction, interfere with or disrupt any District activity or encourage any such disruption. No employee, other than one who has obtained authorization from the appropriate school administrator, shall carry or possess a weapon on school grounds. All employees shall at all times attempt to maintain order, abide by the policies, rules, and regulations of the District, and carry out all applicable orders issued by the Superintendent.

Adopted: date of manual adoption

LEGAL REF.: 22-5-4.4 NMSA (1978)
6.60.9.9 NMAC
6.68.2 NMAC
6.68.3 NMAC

CROSS REF.: GCF - Professional Staff Hiring
JIC - Student Conduct

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

JK - Student Discipline

KFA - Public Conduct on School Property

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

J-1300

©

JFC

STUDENT WITHDRAWAL FROM SCHOOL / DROPOUTS

A withdrawal form shall be presented to the parent or legal guardian of a student who may or must withdraw from school. The withdrawal form shall include space for the reason for withdrawal and the signature of an official of the school from which the student has withdrawn.

Reasons for withdrawal may include:

- Parents or legal guardians moving from the District or to an area served by another school ~~within the District.~~
- A request from a student who has reached eighteen (18) years of age.
- ~~Parents requesting the withdrawal of students who have passed their seventeenth (17th) birthday with permission of the Board in accord with statute.~~
- Absence of more than ten (10) consecutive days; provided that withdrawals do not include truants and habitual truants the school district is required to intervene with and keep in an educational setting as provided in Section 22-12-9 NMSA 1978.
- ~~With the Superintendent's permission for a child under eight (8) years of age at the request of the parent, guardian or surrogate parent.~~
- Expulsion or long-term suspension.

Upon withdrawal, the student shall check in all books and other District property through the office of the school that was attended.

Adopted: date of manual adoption

LEGAL REF.: 22-12-1 NMSA *et seq.* (1978)
22-12-2 NMSA (1978)
22-12-9 NMSA (1978)

CROSS REF.: JF - Student Admissions

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

STATUTES AND ADMINISTRATIVE CODE

6.60.9.9 STANDARDS OF PROFESSIONAL CONDUCT:

A. Preamble

(1) We, licensed New Mexico educators acknowledge that ethical values in our schools cannot exist without ethical leadership. It is our ultimate goal to educate children so that they may become productive citizens; we understand that our guidance and ability to provide choices has a profound effect on reaching this goal. In affording students and each other choices, we agree to consider the consequence of each choice, the moral value best exemplified by the recommended choice, and our position on the choice if it were applied to us. These principles apply equally to all licensed educators in all schools except where they are uniquely applicable to public schools or where they conflict with principles of religious freedom.

(2) Moral values are to ethical leadership what years of experience are to a successful educator. The former sets the stage for success of the latter. Abstract principles that espouse excellence do not easily equate into simple behavioral maxims. We are certain that some foundational concepts can be embraced because they truly celebrate desirable moral values. These concepts are: respect for one's self and others, honesty and openness, the delicate balance between absolute freedom and safety, the equally delicate balance between confidentiality and the right to know, equality of opportunity, fairness to all, and personal integrity.

(3) In the final analysis it is our consistent ethical leadership that wins the most allies and produces the best results. Not only does this code highlight our professional responsibilities, but also it stimulates us to discuss the professional implications of our ethical choices and ethical recommendations, causes us to assess and reassess our application of moral values, and sets forth concrete behaviors appropriate for education professionals. We are committed to this code and understand that it provides minimally accepted standards of professional conduct in education.

B. Standard I: Duty to the student. We endeavor to stimulate students to think and to learn while at the same time we seek to protect them from any harm. Ethical leadership requires licensed educators to teach not only by use of pedagogical tools, but also by consistent and justifiable personal example. To satisfy this obligation, we:

(1) shall, in compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g, 34C.F.R. Part 99), the Individuals with Disabilities Education Act (20 U.S.C. Section 1401 et seq., 34 C.F.R. Part 300), the Mental Health and Developmental Disabilities Code (Section 43-1-19, NMSA 1978), the Inspection of Public Records Act (Section 14-2-1 et seq., NMSA 1978), the Public School Code (Section 22-1-8, NMSA 1978), and the Children's Code (Sections 32A-2-32, 32A-4-3, NMSA 1978), withhold confidential student records or information about a student or his/her personal and family life unless release of information is allowed, permitted by the student's parent(s)/legal guardian, or required by law;

(2) shall not discriminate or permit students within our control,

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

supervision or responsibility to discriminate against any other student on the basis of race, color, national origin, ethnicity, sex, sexual orientation, disability, religion, or serious medical condition;

(3) shall avoid using our positions as licensed school employees to exploit or unduly influence a student into engaging in an illegal act, immoral act, or any other behavior that would subject a licensed school employee or student to discipline for misconduct whether or not the student actually engages in the behavior;

(4) shall tutor students only in accordance with local board policies, if any, only after written permission from the student's parent(s)/legal guardian, and only at a place or time approved by the local school and/or the student's parent(s)/legal guardian;

(5) shall not give a gift to any one student unless all students situated similarly receive or are offered gifts of equal value for the same reason;

(6) shall not lend a student money except in clear and occasional circumstances, such as where a student may go without food or beverage or be unable to participate in a school activity without financial assistance;

(7) shall not have inappropriate contact with any student, whether or not on school property, which includes but is not limited to:

(a) all forms of sexual touching, sexual relations or romantic relations;

(b) inappropriate touching which is any physical touching, embracing, petting, hand-holding, or kissing that is unwelcome by the student or is otherwise inappropriate given the age, sex and maturity of the student;

(c) any open displays of affection toward mostly-boys or mostly-girls; and

(d) offering or giving a ride to a student unless absolutely unavoidable, such as where a student has missed his/her usual transportation and is unable to make reasonable substitute arrangements;

(8) shall not interfere with a student's right to a public education by sexually harassing a student or permitting students within our control, supervision or responsibility to sexually harass any other student, which prohibited behavior includes:

(a) making any sexual advances, requests for sexual favors, repeated sexual references, any name calling by means of sexual references or references directed at gender-specific students, any other verbal or physical conduct of a physical nature with a student even where the licensed educator believes the student consents or the student actually initiates the activity, and any display/distribution of sexually oriented materials where students can see them; and

(b) creating an intimidating, hostile or offensive work/school environment by at a minimum engaging in any of the prohibited behaviors set forth at Paragraph (7) or Subparagraph (a) of Paragraph (8), Subsection B of 6.60.9.9 NMAC, above.

C. Standard II: Duty to the profession. The education profession has been vested by the public with an awesome trust and responsibility. To live up to that lofty expectation, we must continually engender public confidence in the integrity of our profession, and must strive consistently in educating the children of New Mexico, all of whom will one-day shape the future. To satisfy this obligation, we:

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

- (1) shall not make a false or misleading statement or fail to disclose a material fact in any application for educational employment or licensure;
- (2) shall not orally or in writing misrepresent our professional qualifications;
- (3) shall not assist persons into educational employment whom we know to be unqualified in respect to their character, education, or employment history;
- (4) shall not make a false or misleading statement concerning the qualifications of anyone in or desiring employment in education;
- (5) shall not permit or assist unqualified or unauthorized persons to engage in teaching or other employment within a school;
- (6) shall not disclose personal, medical, or other confidential information about other educational colleagues to anyone unless disclosure is required or authorized by law;
- (7) shall not knowingly make false or derogatory personal comments about an educational colleague, although first amendment protected comments on or off campus are not prohibited;
- (8) shall not accept any gratuity, gift, meal, discount, entertainment, hospitality, loan, forbearance, favor, or other item having monetary value whose market value exceeds \$100, excluding approved educational awards, honoraria, plaques, trophies, and prizes;
- (9) shall avoid conduct connected with official duties that is unfair, improper, illegal or gives the appearance of being improper or illegal;
- (10) shall not sexually harass any school employee, any school visitor or anyone else we might encounter in the course of our official duties, which includes:
 - (a) making any sexual advances, requests for sexual favors, repeated sexual references, and name calling by means of sexual references or references directed at any gender-specific individuals named above;
 - (b) making any other verbal gesture or physical conduct with any of the above-named individuals even where the licensed educator believes they consent or they actually initiate the activity;
 - (c) displaying or distributing any sexually oriented materials where the above-named individuals can see them; and
 - (d) creating an intimidating, hostile, or offensive work/school environment by engaging in any of the prohibited behaviors set forth at Subparagraphs (a), (b) or (c), Paragraph (10), Subsection C of 6.60.9.9 NMAC, above;
- (11) shall educate oneself at least annually about avoiding sexual harassment by either attending periodic training, reviewing sexual harassment literature or the EEOC guidelines found at Title 29 Code of Federal Regulations Part 1604 (29 C.F.R. Section 1604.1 et seq.), or contacting appropriate school human resources personnel;
- (12) shall not engage in inappropriate displays of affection, even with consenting adults, while on school property or during school events off campus;
- (13) shall not without permission of a supervisor use public school property to conduct personal business or our personal affairs;
- (14) shall use educational facilities and property only for educational purposes or purposes for which they are intended consistent with applicable policy, law and

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;

(15) shall not discriminate against any school employee, or any other person with whom we have any dealings or contact in the course of our official duties, on the basis of race, color, national origin, ethnicity, sex, sexual orientation, disability, religion, or serious medical condition;

(16) shall not engage in any outside employment:

(a) the performance of which conflicts with our public school duties, such as where a licensed educator takes a private job that would require performance in the very school district where he/she is employed;

(b) where we use confidential/privileged information obtained from our public school employment as part or all of our private employment duties; and

(c) that impairs our physical ability to perform our school duties;

(17) shall not, with the intent to conceal/confuse a fact, change or alter any writing or encourage anyone else to change or alter any document:

(a) in connection with our official school duties;

(b) in connection with another licensed person's official school duties;

(c) in connection with any standardized or non-standardized testing;

(d) in connection with any school application or disclosure process; and

(e) in connection with any writing submitted to the public education department related to our initial or continued licensure, including endorsements;

(18) shall not in connection with any state board-approved teacher test knowingly make any misrepresentations about one's identity, or engage in any false or deceptive acts of test-taking or test-registering;

(19) shall not engage in any conduct or make any statement:

(a) that would breach the security of any standardized or non-standardized tests;

(b) that would ignore administering portions or the entirety of any standardized or non-standardized testing instructions;

(c) that would give students an unfair advantage in taking a standardized or non-standardized test;

(d) that would give a particular school or a particular classroom an unfair advantage in taking a standardized or non-standardized test; and

(e) that would assist students in obtaining services or benefits for which they do not qualify or are not entitled;

(20) shall not, when on school property or off campus while representing the school or attending a school function, engage in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the peace;

(21) shall not hold, or continue to hold, employment for which educator licensure or certification is required when the individual knew, should have known or is informed by the PED, that the individual does not hold the required credentials; and

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

(22) shall not use school information technology equipment, hardware, software or internet access to view, download, display, store or print pornographic images or advertisements, nude images, or sexually explicit depictions or language;

(23) shall not engage in unprofessional conduct, which conduct shall include but not be limited to the following:

- (a) striking, assaulting or restraining a student for no valid reason;
- (b) using any written or spoken words in public schools or at school events that are inflammatory, derogatory or otherwise demonstrate a bias against a person or group, on the basis of their race, religion, culture, ethnicity, sexual preference, sexuality or physical disability;
- (c) bringing firearms onto school property or possessing them on school property, except with proper authorization;
- (d) possessing or consuming alcohol beverages at school;
- (e) possessing or using illegal drugs;
- (f) being under the influence of alcohol or illegal drugs at school;
- (g) actively obstructing an investigation into the possible unethical or illegal conduct of a school employee; and
- (h) engaging in favoritism or preferential treatment toward any school employee or applicant in regards to that individual's hiring, discipline, terms of employment, working conditions or work performance due to that individual's familial relationship with the licensee;

(24) shall report any knowledge of inappropriate contact, as provided by Paragraph (7) of Subsection B of 6.60.9 NMAC with a student or other school employee to the local school authority within 30 days of obtaining such knowledge.

[6.60.9.9 NMAC - N, 04-30-01; A, 10-17-05; A, 10-31-06]

6.60.9.10 FAILURE TO COMPLY WITH THIS CODE: The PED finds that adherence to this code of ethical responsibility has a significant bearing on licensed personnel's competence, turpitude or the proper performance of their duties. It makes the same finding for any other person providing instructional or education-related services in a school who holds any license, certificate or written authority issued by the instructional or education-related services in a school who hold any license, certificate or written authority issued by the PED. Both the code of ethics and standards of professional conduct are intended to provide a valuable framework of personal ethics to assist educators and administrators in their interaction with colleagues, students and parents. However, the standards of professional conduct establish minimal standards of acceptable professional conduct with which all educators and administrators are required to comply. Therefore, the PED through the educator ethics bureau may revoke, suspend or take other appropriate action against any educator license of any person, or may deny applications for initial licensure or continuing licensure to any person, who is within the scope of this rule, and who after hearing, is found to have engaged in ethical misconduct, by failing to comply with one or more of the enumerated provisions of the standards of professional conduct

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

set forth in 6.60.9.9 NMAC, above, exclusive of the preamble. All hearings and attendant notices shall be conducted and served pursuant to the Uniform Licensing Act 61-1-1 through 61-1-31, NMSA 1978 and either 6.68.2 NMAC or 6.68.3 NMAC.

[6.60.9.10 NMAC - N, 04-30-01; A, 10-17-05; A, 10-31-06]

6.60.9.11 DISSEMINATION OF THIS CODE: The PED shall adopt measures to ensure that this code of ethical responsibility receives the widest possible dissemination to all persons falling within its scope. Such measures include but are not limited to:

- A. providing information about the code of ethical responsibility directly through the PED and the PED's application process;
- B. providing information about the code of ethical responsibility to all school districts, charter schools, and non-public schools accredited by the PED;
- C. notifying any school district, charter school or private school accredited by the PED of the decision and order of the PED after the PED has taken final licensure action against one of that school's PED licensed employees based in whole or in part on a failure to comply with the standards of professional conduct;
- D. any other reasonable measure that is calculated to result in the widest dissemination of the PED's code of ethical responsibility and notification of the consequences of failure to comply with the standards of professional conduct.

[6.60.9.11 NMAC - N, 04-30-01; A, 10-17-05; A, 10-31-06]

6.60.9.12 REPORTING REQUIREMENT: It is the duty of each school superintendent or charter school administrator to provide prompt written notification to the director of the educator ethics bureau after taking final action to discharge or terminate the employment, based in whole or in part on a violation of the standards of professional conduct in this rule, of any certified or licensed school employee, or any other person providing instructional or education-related services in a school under written authority of the PED.

[6.60.9.12 NMAC - N, 04-30-01; A, 10-17-05; A, 10-31-06]

22-12-2. Compulsory school attendance; responsibility.

A. Except as otherwise provided, a school-age person shall attend public school, private school, home school or a state institution until the school-age person is at least eighteen years of age unless that person has graduated from high school or received a general educational development certificate. A parent may give written, signed permission for the school-age person to leave school in case of hardship approved by the local superintendent.

B. A school-age person subject to the provisions of the Compulsory School Attendance Law [22-12-1 NMSA 1978] shall attend school for at least the length of time of the school year that is established in the school district in which the person is a resident or the state-chartered charter school in which the person is enrolled and the school district or state-chartered charter school shall not excuse a student from attending school except as provided in that law or for parent-authorized medical reasons.

C. Any parent of a school-age person subject to the provisions of the Compulsory School Attendance Law is responsible for the school attendance of that person.

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

D. Each local school board and each governing body of a charter school or private school shall enforce the provisions of the Compulsory School Attendance Law for students enrolled in their respective schools.

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 ADVISORY

Volume 7, Number 2

May 2010

CONTENTS

Policy Advisory No. 71	BDE—Board Committees
Policy Advisory No. 72	BDF—Advisory Committees
Policy Advisory Discussion	

Policy Advisory No. 71 - BDE-Board Committees. It has been the position of Policy Services that because of the size of the Local Board, use of committees of the Board should be limited. Each Board member has the same authority as the other unless the Board as a whole delegates authority to an individual Board member. Any delegation to a Board member or a committee can be withdrawn or is subject to being overturned by the Board as a whole. With the passing and signing of HEC/HB 227 & 251, requiring the Board to establish a finance subcommittee of two Board members, it was determined that policy BDE should be clarified. BDE will now state that there should be no standing or permanent committees composed entirely of Board members. It is Policy Services position that all Board members should receive and act on the same information and share all information as a corporate body. Separate committees tend to provide positions of influence based on the authority of the committee rather than based upon equality of authority of each Board member. Because of the new law, two board members must be appointed to a finance committee, however, it is suggested that there never be a number on the subcommittee that would equal a quorum of the

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

Board. Such a subcommittee would likely violate the Open Meeting law, but would also create a problem by being able, as a committee, to make Board financial policy by voting as a quorum at a Board meeting. By the policy proposal in this advisory the Board is committing to appoint members to a finance committee required by statute for a limited purpose, there is no reason the board cannot change the finance subcommittee membership on a periodic or as determined basis, and it is Policy Services recommendation that the Board incorporate this intention in any charge or direction to the financial subcommittee..

Policy Advisory No. 72 - BDF-Advisory Committees was modified to incorporate the term advisory after ad hoc to clarify that advisory committees are to be appointed for a particular purpose, the meaning intended by the term ad hoc. Policy BDF will provide guidance to the Board in the steps needed to incorporated HEC/HB 227 & 251 requiring the Board to establish an advisory finance and audit committee. Any committee formed by the Board that would equal a quorum of the Board is subject to the Open Meeting laws and all that it entails including notice, agenda, minutes and public meetings. The subcommittee or advisory committee may also require assistance of staff and funding for attendance at certain meetings and tutorials. These requirements are anticipated by the language of the policy. A Board may add or remove language from policy BDF as they see fit and as necessary to comply with the New Mexico Open Meeting Act.

Summary

The above recommendations are made to assist the Governing Board and administration. The policies are not required to implement HEC/HB 227 & 251, however, the implementation of the bill is required by statute. A copy of the bill is found following the recommended policies. You may wish to use the bill as your guidance to developing a charge for the Finance subcommittee and the Audit committee in accord with BDF. You need no policy to form a committee but it is usually important to provide them with a charge, directions, assistance with meeting the Open Meeting law requirements and clerical needs.

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.

Policy Services

Page 2 of 2

B-1100

©

BDE

BOARD COMMITTEES

Committee work of the Board shall usually be done by members of the Board sitting as a committee of the whole. ~~The Board shall not establish standing or permanent committees, and~~ there shall be no standing or permanent committees composed entirely of ~~the~~ Board members that would make up a quorum of the Board. If a temporary committee is appointed, it shall serve only for the time needed for its designated purpose. Committee recommendations shall be advisory only.

Adopted: date of manual adoption

LEGAL REF.: 10-15-1 NMSA

CROSS REF.: BDF - Advisory Committees

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

B-1200

©

BDF

ADVISORY COMMITTEES

The Board may, by majority vote, appoint ad hoc advisory committees when deemed advisable. Recommendations of such committees cannot be binding on the Board; they may be advisory only. These committees will be responsible for presenting to the Board recommendations for action based on research and facts. Any such committee shall ~~automatically~~ be dissolved upon completion of its assignment or may be dissolved by a vote of the Board.

The Board President shall develop guidelines for each committee. These guidelines shall be approved by the Board prior to the first meeting of each committee and shall may include, but not necessarily be limited to, the following:

- A written, specific statement of the purpose of the committee.
- The dates on which interim and final reports of the committee are to be rendered.
- The date or event upon which the committee will be terminated.
- The extent to which facilities, supplies, equipment, and clerical support will be provided to each committee.

The Superintendent will ensure that the following actions are taken for each committee established by the Board:

- Each committee member will be briefed on the requirements of the New Mexico Open Meeting Law as it applies to committees of the Board.
- Notices and agendas of all meetings of the committee will be posted.
- Minutes will be kept of each meeting.

A representative of the Superintendent will serve as ex-officio members of all advisory committees.

Adopted: date of manual adoption

LEGAL REF.: 10-15-1 NMSA

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

HEC/HB227&251

**AN ACT
RELATING TO PUBLIC SCHOOLS; REQUIRING LOCAL SCHOOL
BOARDS AND
GOVERNING AUTHORITIES OF CHARTER SCHOOLS TO ESTABLISH
FINANCE
SUBCOMMITTEES AND AUDIT COMMITTEES; REQUIRING
MEMBERSHIP TO
INCLUDE PERSONS WITH ACCOUNTING OR FINANCIAL EXPERIENCE
AND
PARENTS.**

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

**Section 1. A new section of the Public School Code is enacted to read:
"LOCAL SCHOOL BOARD FINANCE SUBCOMMITTEE--AUDIT
COMMITTEE--MEMBERSHIP--DUTIES.--**

**A. As used in this section, "local school board" includes the governing
authority of a charter school.**

**B. Each local school board shall appoint at least two members of the board
as a finance subcommittee to assist the board in carrying out its budget
and finance duties.**

C. The finance subcommittee shall:

(1) make recommendations to the local school board in the following areas:

**(a) financial planning, including reviews of the school district's revenue
and expenditure
projections;**

**(b) review of financial statements and periodic monitoring of revenues and
expenses;**

(c) annual budget preparation and oversight; and

(d) procurement; and

**(2) serve as an external monitoring committee on budget and other
financial matters.**

**D. Except as otherwise provided in this section, each local school board
shall appoint an audit committee that consists of two board members, one
volunteer member who is a parent of a student attending that school
district and one volunteer member who has experience in accounting or
financial matters. The superintendent and the school district business**

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

manager shall serve as ex-officio members of the committee. A local school board with more than five members may appoint more than two board members to its audit committee. The audit committee shall:

- (1) evaluate the request for proposal for annual financial audit services;
- (2) recommend the selection of the financial auditor;
- (3) attend the entrance and exit conferences for annual and special audits;
- (4) meet with external financial auditors at least monthly after audit field work begins until the conclusion of the audit;
- (5) be accessible to the external financial auditors as requested to facilitate communication with the board and the superintendent;
- (6) track and report progress on the status of the most recent audit findings and advise the local school board on policy changes needed to address audit findings;
- (7) provide other advice and assistance as requested by the local school board; and
- (8) be subject to the same requirements regarding the confidentiality of audit information as those imposed upon the local school board by the Audit Act and rules of the state auditor."

POLICY SERVICES ADVISORY

Volume 7, Number 3

June 15, 2010

CONTENTS

Policy Advisory No. 73

GBP—Prohibited Personnel Practices
GBP-E—Prohibited Personnel Practices

Policy Advisory No. 74

IKF—Graduation 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.

Policy Services

Page 2 of 2

Policy Advisory No. 75

JJIB—Interscholastic Sports
JJIB-E—Interscholastic Sports

Policy Advisory Discussion

The enacted Bills of the 2010 regular legislative session and relevant New Mexico Administrative Code applicable to the changes to policy and exhibits above can be found attached following the full text and model changes in this advisory document.

Policy Advisory No. 73 GBP—Prohibited Personnel Practices. HJC/House Bill 165 enacted during the last regular legislative session and not yet codified, prohibits public employers taking retaliatory action against public employees in certain circumstances and creates a right to civil action on the part of an employee. Employers are prohibited from taking a retaliatory action against a public employee for the following activities if, in good faith, the employee believes that the action they have taken is based on an act or a failure to act on the part of the school district which constitutes unlawful or improper activity:

- communicating to a public body or third party,
- providing information to, or testifying before a public body,
- objecting to or refusing to participate in an activity, policy or practice of a public body.

Employees are entitled to actual damages, reinstatement with seniority status and two times the amount of back pay with interest if the retaliation is within a two year period of the action resulting after July 1, 2008. Additionally, the employer is required to pay the litigation costs and reasonable attorney fees of the employee.

Though there is no requirement for a policy on this matter, policy services has created a general policy citing the prohibitions and the requirements. There is a requirement for posting notices on the employer's premises that set forth the provisions of the Whistleblower Protection Act. A model posting has been prepared in Exhibit GBP containing a summary of the basic content of the Act.

Policy Advisory No. 74 IKF—Graduation Requirements. House Bill 53, recently enacted, modified New Mexico Statute 22-13-1.1 to include an option to meet the four (4) units of mathematics credit for graduation from a New Mexico High School. It provides that a financial literacy course that meets state academic content and performance standards may qualify as one of the four required

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

mathematics courses necessary for graduation (22-13-1.1 part I (2).) This factor has now been added to the current graduation requirements.

House Bill 44, also recently enacted, modified New Mexico Statute 22-13-1.1 to include a requirement for health education before graduation. In so doing, the legislature also included the following:

- health education may be required in either middle school or high school by district determination,
- each school district shall submit by 2011-2012 school year a health education implementation plan for 2012-2013 and subsequent years including which grade the course will be required in and how the course aligns with department content and performance standards.

The addition of the health education course with allowance for having the course credited at the eighth grade or in high school creates a bit of a conundrum. If the district decides to offer the course at the eighth grade, students transferring into the high school without the course will need to take it as an elective for graduation. A further issue of offering the course at the eighth grade is that the clearance for graduation would require reviewing eighth grade transcripts for each student. On the other hand, making the course a high school requirement, while not necessarily adding to the twenty four (24) minimum unit requirements for graduation does limit the number of electives but causes the same examination of transfer student transcript's from both middle and high school to determine if they have taken and passed a qualified health education course.

Currently 22-13-1 NMSA (1978) D (13) states that "in fourth through eighth grades, instruction that meets academic content and performance standards shall be provided in" among other instructional areas, "health education."

Also 22-13-1 NMSA (1978) G states "In ninth through twelfth grades, instruction that meets academic content and performance standards shall be provided in health education."

The decision on whether to make the credited course in the eighth or the high school grades appears to be one of what the district is currently offering in the eighth grade. If the district is offering a qualified health education course in the eighth grade then continuing with this would be an easy solution. The question then becomes what about the high school requirement for health education.

Again, the issue is clouded by the addition of laws by the legislature without consideration of the affect of previously enacted laws related to the same topic or

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

issue. Policy Services can see that this will be a much discussed topic finally concluding on consensus based upon the circumstances in each district.

Please be aware that the included model policy only applies to those districts that require the state minimum of twenty four (24) units to graduate. Others will need to make adjustments to the unit requirements in their individual policy.

Policy Advisory No. 75 JJIB—Interscholastic Sports. SEC/Senate Bill 01 relates to school athletics safety by establishing safety protocols and education regarding brain injury resulting from school athletic activities. To narrow the scope of the bill the term "school athletic activities" was defined to include a sanctioned middle school, junior high school or senior high school function that the New Mexico activities association regulates. Using this definition, policy services modified model policy JJIB titled Interscholastic Sports with a sub heading of School Athletic Activities for purposes of ease of locating to include the major safety issues of the bill. The term interscholastic athletics was changed to school athletic activities and the definition was incorporated at the outset of the policy for clarity. The bill mandated an information form on brain injury be distributed and that schools require signatures authorizing student participation by both the student and parent. These requirements were placed in the rules governing participation by a student in athletic activities. The safety protocol and district requirement for training of coaches on brain injury mandated by the bill were then incorporated in the Health and Safety subsection of the model policy. SB 01 has not yet been codified so the legal reference is yet to be determined. By the time districts adopt the advisory this should be known and included.

Title IX. In addition to the bills which came from the 2010 regular legislative session, a late 2009 Department of Public Education addition to the New Mexico Administrative Code (NMAC) at 6.13.4.8 regarding Title IX requires some attention. This section of NMAC requires each district to designate a Title IX coordinator by name, title, school address and telephone number on the district web site, in handbooks, and in publications. This section also requires information about the Athletic Equity Act found at 22-31-1 through 6 NMSA be made available and students be informed of their right to review the data gathered. It also requires the school administration to submit an assurance of compliance with Title IX to the Board not later than August 31 of each year.

All of these requirements have been memorialized in exhibit JJIB-E titled Interscholastic Sports with a sub heading Title IX for ease of access.

As a matter of information, the federal government requires that notice be given prominently on publications of the district essentially stating "No person...shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be

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

subjected to discrimination under any education program or activity receiving federal financial assistance..." Additionally, the district is required to have a non discrimination policy and grievance procedure for prompt and equitable resolution of complaints. Those aspects of Title IX can be found in your current policy at AC, ACA, and GBA and their accompanying regulations and exhibits.

Other matters

It has been brought to my attention that districts are being encouraged to write a policy on "sexting" which is the term used for transmittal of sexually explicit pictures and text by telephone. It is policy services position that if telephones or electronic media are used in some way that disrupts the educational program through a nexus with the school operation, it is indeed a school districts' prerogative to take disciplinary action against the person or persons causing the disruption. This is well established. However, once the use of the phone or electronic media is established as a disruption, the school should try to quell the disturbance to the educational process, and inform parents and authorities if required or needed pertaining to known criminal or civil penalties that may be involved. There are adequate penalties and procedures of due process in policies JIC, Student Conduct, JK and JK-R, Student Discipline, and JII, Student Concerns, Complaints, and Grievances. Look carefully at the penalties that can be imposed under JK-R before exploring further policy. Districts need not establish another named policy to accomplish the purpose of maintaining order.

The New Mexico Public School Insurance Authority (NMPSIA) recently enacted 6.50.18.7 and 6.50.17.8 on volunteers in schools and Use of School Facilities by Private persons. These are being reviewed and comment will be made following discussion with the persons knowledgeable of the authorities purpose and intent.

If you have any questions, call Policy Services at (505) 469-0193. Ask for Donn Williams, Policy Services Director. E-mail address, [nmsbapolicy@cox.net].

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

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

G-1900

©

GBP

PROHIBITED PERSONNEL PRACTICES

(Whistleblower)

Retaliatory Action Prohibited

It is a prohibited personnel practice to take a retaliatory action against a public employee for the following activities if, in good faith, the employee believes that the action they have taken is based on an act or failure to act on the part of the school district which constitutes unlawful or improper activity:

- communicating to a public body or third party,
- providing information to, or testifying before a public body,
- objecting to or refusing to participate in an activity, policy or practice of a public body.

Posting Required

Every public employer shall keep posted in a conspicuous place on the public employer's premises notices prepared by the employer that set forth the provisions of the Whistleblower Protection Act.

Adopted: date of manual adoption

LEGAL REF.: Statue to be inserted

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

EXHIBIT

EXHIBIT

PROHIBITED PERSONNEL PRACTICES

(Whistleblower Protection Act Summary)

It is a prohibited personnel practice to take a retaliatory action against a public employee for the following activities if, in good faith, the employee believes that the action they have taken is based on an act or failure to act on the part of the school district which constitutes unlawful or improper activity:

- communicating to a public body or third party,
- providing information to, or testifying before a public body,
- objecting to or refusing to participate in an activity, policy or practice of a public body.

Damages

A public employer that violates the provisions of the Whistleblower Protection Act shall be liable to the public employee for actual damages, reinstatement with the same seniority status that the employee would have had but for the violation, two times the amount of back pay with interest on the back pay and compensation for any special damage sustained as a result of the violation. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee. An employee may bring an action pursuant to this section in any court of competent jurisdiction.

Affirmative Defense

It shall be an affirmative defense to a civil action brought pursuant to this section that the action taken by a public employer against a public employee was due to the employee's misconduct, the employee's poor job performance, a reduction in work force or other legitimate business purpose unrelated to conduct prohibited pursuant to the Whistleblower Protection Act and that retaliatory action was not a motivating factor.

Remedies

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 remedies provided for in the Whistleblower Protection Act are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law. Nothing in the Whistleblower Protection Act precludes civil actions or criminal sanctions for libel, slander or other civil or criminal claims against a person who files a false claim under that act.

Applicability

The provisions of this act apply only to civil actions that occurred on or after July 1, 2008 for damages resulting from retaliatory action filed within two years from the date on which the retaliatory action occurred.

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

GRADUATION REQUIREMENTS

Regular Education

~~*Ninth grade class of 2005-2006.* A minimum of twenty three (23) units of credit aligned to the state academic content and performance standards as listed below are required for graduation for those beginning with the ninth grade class of 2005-2006. Each student shall demonstrate accomplishment of the standards in English, reading, writing, science, social studies, and mathematics adopted by the Secretary of Public Education to receive a high school diploma. If a student exits from the school system at the end of grade twelve (12) 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 (5) years, but no later than July 1, 2010, 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.~~

Ninth grade class of 2010-2011 and after. A minimum of twenty four (24) units of credit aligned to the state academic content and performance standards as listed below are required for graduation for those beginning with the ninth grade class of 2010-2011. A student may receive a high school diploma of excellence after having demonstrated accomplishment of the standards or a portfolio of standards based indicators in mathematics, reading and language arts, writing, social studies, and science adopted by the Secretary of Public Education. If a student exits from the school system at the end of grade twelve (12) without having satisfied the above requirements, the student shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five (5) years after a student exits from the school system, the student satisfies the requirements listed, the student may receive a high school diploma of excellence.

Graduation requirements may be met as follows:

- By successful completion of subject area course requirements.
- By mastery of the standards or a portfolio of standards based indicators adopted by the Secretary of Public Education and other competency requirements for the subject as determined by the Board.

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

- By earning credits through correspondence courses that meet graduation requirements and/or by passing appropriate courses at the college or university level if the courses are determined to meet standards and criteria established by the Board.

Graduation requirements are:

English (grammar and literature emphasis)	4.0 units
Math (one [1] unit equal to algebra I or higher)	3.0 units
Science (for ninth graders beginning with — 2005-2006 school year three [3] units* — one [1] with a laboratory component)	2.0 units*
United States History and Geography, World History — and Geography, and Government and Economics	3.0 units
Physical Education	1.0 unit
Communication Skills or Business Education	1.0 unit
New Mexico History (for ninth graders beginning — with 2005-2006 school year 0.5 unit*)	0.5 unit
Electives including Drivers Education and Student — Services (for ninth graders beginning — with 2005-2006 school year 7.5 units*)	7.5 units*
Total	23.0 units

~~* This denotes changes effective for those beginning the ninth grade in 2005-2006.~~

For students entering as ninth graders in 2009-2010 at least one (1) unit of the following twenty four (24) units must be earned in an advanced placement or honors program, a dual-credit course or distance learning course.

English (grammar, nonfiction writing and literature emphasis)	4.0 units
Math (one [1] equal to algebra II or higher unless parents sign off <u>and a financial literacy</u> <u>course may meet one of the required units</u>)	4.0 units
Science (two [2] with a laboratory component)	3.0 units
United States History and Geography, World History and Geography, and Government and Economics and one- half (1/2) unit of New Mexico History	3.5 units
Physical Education	1.0 unit
Career cluster course, workplace readiness or language	1.0 unit

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

*Electives including student service learning 7.5 units
Total 24.0 units

*For students entering the eighth grade in the 2012-2013 school year, a course in health education is required prior to graduation.

A student shall develop and file an updated final next-step plan during the senior year and prior to graduation that conforms with the requirements for a student curriculum plan pursuant to 22-13-1.1 NMSA 1978. 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.

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

Parents are to be notified in writing not later than the conclusion of the third (3rd) nine-weeks grading period of their students senior year if the student is at risk of not meeting all graduation requirements. Progress reports are to be provided to parents and students at each grading period.

A high school student required to transfer to an out-of-state school by the transfer of the student's parents, who are members of the New Mexico national guard or the armed forces of the United States, may request that a diploma be issued by the New Mexico high school of transfer. The student must meet the guidelines and comply with the requirements of the New Mexico Statutes Annotated regarding military dependent transfers and their courses and grades must meet or exceed New Mexico's requirements for graduation as determined by the School District.

Special Education

Listed above, under "Regular Education," are the requirements that must be completed before a student may receive a high school diploma or diploma of excellence. Completion of graduation requirements for special education students who do not meet the required units of credit shall be determined on a case-by-case basis in accordance with the special education course of study and the individualized education program of the student.

Adopted: date of manual adoption

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

LEGAL REF.: 22-13-1.1 NMSA (1978)
22-13-1.4 NMSA (1978)
6.29.1.9 NMAC

CROSS REF.: IGD - Curriculum Adoption
IGE - Curriculum Guides and Course Outlines
IHA - Basic Instructional Program
IIE - Student Schedules and Course Loads
IKA - Grading/Assessment Systems
JFABC - Admission of Transfer Students
JG - Assignment of Students to Classes

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

J-4350

©

JJIB

INTERSCHOLASTIC SPORTS
(School Athletic Activities)

General

School athletic activity means a sanctioned middle school, junior or senior high school function that the New Mexico activities association regulates.

The purpose of ~~interscholastic athletics~~ school athletic activities is both educational and recreational. The school sports program should encourage participation by as many students as possible and should always be conducted with the best interests of the participants as the first consideration. Districts shall provide comparable athletic opportunity in ~~interscholastic sports~~ school athletic activities for both sexes. The district has the option of prohibiting participation by both sexes on the same team, where comparable or separate athletic opportunity exists for both sexes.

District participation in ~~interscholastic athletics~~ school athletic activities shall be subject to approval by the Board. This shall include approval of membership in any leagues, associations, or conferences, and of any new agreements with other schools for a series of games or events.

The following rules shall be observed for participation by individual students:

- For each type of sport in which the student engages, the parents or guardian must give written consent.
- The student must be determined by a physician to be physically fit for the sport.
- Before participation in school athletic activities, a brain injury information form shall be provided to a student athlete and the student athlete's parent or guardian. The school district shall receive signatures on the brain injury information form from the student athlete and the student athlete's parent or guardian before allowing participation in school athletics.
- The student must obtain or have catastrophic health or accident insurance.

The Superintendent shall set up other rules for participation, such as those governing academic standing, in accordance with policies of the District and

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

pertinent regulations and recommendations of the state interscholastic athletic association.

Charter School Student Participation

Charter school students in grades seven (7) through twelve (12) may participate in School District extracurricular activities sanctioned by the New Mexico Activities Association in the School District attendance zone in which the student lives (participating in only one [1] public school program) if they meet eligibility requirements other than enrollment and if the charter school does not offer such activities sanctioned by the New Mexico Activities Association.

Home School Student Participation

Home school students may participate in one (1) School District athletic activity sanctioned by the New Mexico Activities Association in the School District attendance zone in which the student lives if they meet the eligibility requirements other than enrollment in the school.

Health and Safety of Participants

The health and safety of participants in interscholastic athletic activities must receive careful consideration. Participants must be provided access to water at all times during practice sessions, games, or other interscholastic athletic activities.

A coach shall not allow a student athlete to participate in a school athletic activity on the same day a coach, a school official or a student athlete reports, observes or suspects that a student athlete exhibits signs, symptoms or behaviors consistent with a brain injury or has been diagnosed with a brain injury.

A coach may allow a student athlete who has been prohibited from participating in a school athletic activity to participate in a school athletic activity no sooner than one (1) week after the student athlete has received a brain injury and only after the student athlete:

- no longer exhibits any sign, symptom or behavior consistent with a brain injury; and
- receives a medical release from a licensed health care professional.

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

Each school athletic activities coach is required to have training on brain injury recognition and follow-up provided by the New Mexico activities association.

The Superintendent shall require that regulations for health and safety of participants in ~~interscholastic athletics~~ school athletic activities be developed, implemented, and enforced. Such regulations may, at the discretion of the Superintendent, be incorporated into this policy as an administrative regulation.

Adopted: date of manual adoption

LEGAL REF.: 22- - NMSA (1978)
22-2-2 NMSA (1978)
22-8-18 NMSA (1978)
22-8C-8 NMSA (1978)
22-31-1 et seq. NMSB (1978)
6.13.4.8 NMAC

CROSS REF.: GCDM - Professional Staff Extra Duty
JJI - Athletics / Sports
JJJ - Extracurricular Activity Eligibility
JLCA- Physical Examination of Students

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

EXHIBIT **EXHIBIT**

INTERSCHOLASTIC SPORTS

(Title IX)

The following is required by 6.13.4.8 of the New Mexico Administrative Code:

- The school district shall designate a Title IX coordinator by name, title, school address and telephone number on the district web site in handbooks and in publications.

Name:
Title
Address:
Phone:
e-mail:

- Annually, the school district shall inform students of the right to review data gathered under the School Athletic Equity Act NMSA 22-31-1 through 6.
- Annually, the school administration shall submit an assurance of compliance with Title IX to the Board not later than August 31.

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

Relevant Statutes and Rules

HJC/HB 165

AN ACT RELATING TO PUBLIC EMPLOYMENT; ENACTING THE WHISTLEBLOWER PROTECTION ACT; PROHIBITING PUBLIC EMPLOYER RETALIATORY ACTION AGAINST PUBLIC EMPLOYEES IN CERTAIN CIRCUMSTANCES; CREATING A RIGHT TO CIVIL ACTION FOR DAMAGES. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Whistleblower Protection Act".

Section 2. DEFINITIONS.--As used in the Whistleblower Protection Act:

A. "good faith" means that a reasonable basis exists in fact as evidenced by the facts available to the public employee;

B. "public employee" means a person who works for or contracts with a public employer;

C. "public employer" means:

(1) any department, agency, office, institution, board, commission, committee, branch or district of state government;

(2) any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived;

(3) any entity or instrumentality of the state specifically provided for by law; and

(4) every office or officer of any entity listed in Paragraphs (1) through (3) of this subsection;

D. "retaliatory action" means taking any discriminatory or adverse employment action against a public employee in the terms and conditions of public employment; and

E. "unlawful or improper act" means a practice, procedure, action or failure to act on the part of a public employer that:

(1) violates a federal law, a federal regulation, a state law, a state administrative rule or a law

of any political subdivision of the state; office; or

(2) constitutes malfeasance in public

(3) constitutes gross mismanagement, a waste of funds, an abuse of authority or a substantial and specific danger to the public.

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

Section 3. PUBLIC EMPLOYER RETALIATORY ACTION PROHIBITED.--A public employer I shall not take any retaliatory action against a public employee because the public employee:

- A. communicates to the public employer or a third party information about an action or a failure to act that the public employee believes in good faith constitutes an unlawful or improper act;
- B. provides information to, or testifies before, a public body as part of an investigation, hearing or inquiry into an unlawful or improper act; or
- C. objects to or refuses to participate in an activity, policy or practice tHat constitutes an unlawful or improper act.

Section 4. RIGHT TO CIVIL ACTION FOR DAMAGES-- AFFIRMATIVE DEFENSES--REMEDY NOT EXCLUSIVE.--

- A. A public employer that violates the provisions of the Whistleblower protection Act shall be liable to the public employee for actual damages, reinstatement with the same seniority status that the I employee would have had but for the violation, two times the amount of back pay with interest on the back pay and compensation for any special damage sustained as a result of the violation. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee. An employee may I bring an action pursuant to this section in any court of competent jurisdiction.
- B. It shall be an affirmative defense to a civil action brought pursuant to this section that the action taken by a public employer against a public employee was due to the employee's misconduct, the employee's poor job performance, a reduction in work force or other legitimate business purpose unrelated to conduct prohibited pursuant to the Whistleblower Protection Act and that retaliatory action was not a motivating factor.
- C. The remedies provided for in the Whistleblower Protection Act are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law
- D. Nothing in the Whistleblower Protection Act precludes civil actions or Criminal sanctions for libel, slander or other civil or criminal claims against a person who files a false claim under that fact.

Section 5. POSTING OF LAW AND INFORMATION.--Every public employer shall keep posted in a conspicuous place on the public employer's premises notices prepared by the employer that set forth the provisions of the Whistleblower Protection Act.

Section 6. LIMITATION ON ACTIONS.--A civil action pursuant to the Whistleblower Protection Act shall be forever barred unless the action is filed

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

within two years from the date on which the retaliatory action occurred.

Section 7. APPLICABILITY--The provisions of this act apply only to civil actions for damages resulting from retaliatory action that occurred on or after July 1, 2008.

HB 53

22-13-1.1. GRADUATION REQUIREMENTS.--summary of sections changed

Underline emphasis added

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; and provided that a financial literacy course that meets state mathematics academic content and performance standards shall qualify as one of the four required mathematics units;
- (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, 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. Financial literacy shall be offered as an elective. Pre-apprenticeship programs may be offered as electives. Media literacy may be offered as an elective.

J. For students entering the eighth grade in the 2012-2013 school year, a course in health education is required prior to graduation. Health education may be required in either middle school or high school, as determined by the school district. Each school district shall submit to the department by the beginning of the 2011-2012 school year a health education implementation plan for the 2012-2013 and subsequent school years, including in which grade health education will be required and how the course aligns with department content and performance standards.

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

SB 01

AN ACT

RELATING TO SCHOOL ATHLETICS SAFETY; ESTABLISHING SAFETY PROTOCOLS AND EDUCATION REGARDING BRAIN INJURY RESULTING FROM SCHOOL ATHLETIC ACTIVITIES. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public School Code is enacted to read:

"BRAIN INJURY--PROTOCOLS TO BE USED BY COACHES FOR BRAIN INJURIES RECEIVED BY STUDENTS IN SCHOOL ATHLETIC ACTIVITIES--TRAINING OF COACHES--INFORMATION TO BE PROVIDED TO COACHES, STUDENT ATHLETES AND STUDENT ATHLETES' PARENTS OR GUARDIANS.--

A. A coach shall not allow a student athlete to participate in a school athletic activity on the same day that the student athlete:

(1) exhibits signs, symptoms or behaviors consistent with a brain injury after a coach, a school official or a student athlete reports, observes or suspects that a student athlete exhibiting these signs, symptoms or behaviors has sustained a brain injury; or

(2) has been diagnosed with a brain injury.

B. A coach may allow a student athlete who has been prohibited from participating in a school athletic activity pursuant to Subsection A of this section to participate in a school athletic activity no sooner than one week after the student athlete has received a brain injury and only after the student athlete:

(1) no longer exhibits any sign, symptom or behavior consistent with a brain injury; and

(2) receives a medical release from a licensed health care professional.

C. Each school district shall ensure that each coach participating in school athletic activities in the school district receives training provided pursuant to Paragraph (1) of Subsection D of this section.

D. The New Mexico activities association shall consult with the brain injury advisory council and school districts to promulgate rules to establish:

(1) protocols and content consistent with current medical knowledge for training each coach participating in school athletic activities to:

(a) understand the nature and risk of brain injury associated with athletic activity;

(b) recognize signs, symptoms or behaviors consistent with a brain injury when a coach suspects or observes that a student athlete has received a brain injury;

(c) understand the need to alert appropriate medical professionals for urgent diagnosis or treatment; and

(d) understand the need to follow medical direction for proper medical protocols; and

(2) the nature and content of brain injury information forms and educational materials for, and the means of providing these forms and materials to, coaches, student athletes and student athletes' parents or guardians regarding the nature and risk of brain injury resulting from athletic activity, including the risk of continuing or returning to athletic activity after a brain injury.

E. At the beginning of each academic year or participation in school athletic activities, a school district shall provide a brain injury information form created pursuant to Subsection D of this section to a student athlete and the student athlete's parent or guardian. The school district shall receive signatures on the brain injury information form from the student athlete and the student athlete's parent or guardian before permitting the student athlete to begin or continue participating in school athletic activities for that academic year.

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

F. As used in this section:

- (1) "academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year;
- (2) "brain injury" means a body-altering physical trauma to the brain, skull or neck caused by, but not limited to, blunt or penetrating force, concussion, diffuse axonal injury, hypoxia-anoxia or electrical charge;
- (3) "school athletic activity" means a sanctioned middle school, junior high school or senior high school function that the New Mexico activities association regulates;
- (4) "student athlete" means a middle school, junior high school or senior high school student who engages in, is eligible to engage in or seeks to engage in a school athletic activity; and
- (5) "licensed health care professional" means:
 - (a) a practicing physician or physician assistant licensed pursuant to the Medical Practice Act;
 - (b) a practicing osteopathic physician licensed pursuant to Chapter 61, Article 10 NMSA 1978;
 - (c) a practicing certified nurse practitioner licensed pursuant to the Nursing Practice Act;
 - (d) a practicing osteopathic physician's assistant licensed pursuant to the Osteopathic Physicians' Assistants Act;
 - (e) a practicing psychologist licensed pursuant to the provisions of the Professional Psychologist Act; or
 - (f) a practicing athletic trainer licensed pursuant to the provisions of the Athletic Trainer Practice Act."

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

§ 6.13.4.8. REQUIREMENTS

A. No officer, agent or employee of any local school board, school district or charter school shall subject any person to discrimination based on gender in any interscholastic sport. Nor shall any public school operate its interscholastic program in a manner that discriminates against students or staff on the basis of gender.

B. School districts and charter schools shall provide comparable athletic opportunity in interscholastic sports for both genders. Each school district and charter school has the option of prohibiting participation by both genders on the same team, where comparable or separate athletic opportunity exists for both genders. Comparable athletic opportunity exists only where a good faith effort is made so that teams are provided with comparable facilities, equipment, supplies, game and practice schedules, travel and per diem allowances, coaching (including assignment and compensation of coaches), academic tutoring, housing, dining facilities and publicity.

C. All school districts and charter schools shall designate at least one Title 9 coordinator whose name, title, school address and telephone number shall be prominently displayed on the district's or charter school's website and in school publications and handbooks. A Title 9 coordinator shall at a minimum have the following responsibilities:

- (1) to receive and process complaints and inquiries related to Title 9;
- (2) to make recommendations to the school administration on best practices for avoiding and correcting sex discrimination in school athletics programs;
- (3) to carry out the local school's athletic non-discrimination policy; and
- (4) to enforce corrective measures to comply with Title 9 after an adjudication or determination of non-compliance.

D. In determining comparable athletic opportunity, each public school that has an athletics program for grades seven through twelve shall undertake self-evaluation and continuing reappraisal of student needs as determined by the total educational program. To assist in the self-evaluation, each public school that has an athletics program for grades seven through twelve shall report the following data to the department;

(1) Beginning August 31, 2011 and each year thereafter no later than August 31st, the following data shall be submitted to the department in a format required by the department:

- (a) the following information pertaining to enrollment:
 - (i) the total enrollment in each public school as an average of enrollment at the eightieth and one hundred twentieth days of the school year;
 - (ii) student enrollment by gender;
 - (iii) total number of students participating in athletics;
 - (iv) athletics participation by gender; and
 - (v) the number of boys' teams and girls' teams by sport and by competition level;
- (b) the following information pertaining to athletic directors, coaches and other school personnel:

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) the name and gender of each public school's athletic director;
- (ii) the name of each team's coaches and other team personnel, with their gender, job title and employment status, such as full-time, part-time, contract or seasonal, specified;
- (iii) the coach-to-athlete and staff-to-athlete ratio for each team; and
- (iv) the stipend or other compensation for coaching paid to coaches of boys' teams and to coaches of girls' teams for each public school.

(2) Beginning August 31, 2012 and each year thereafter no later than August 31st, the following data shall be submitted to the department in a format required by the department:

(a) an accounting of the funding sources that are used to support the school's athletics programs and to which teams those funds are allocated funding sources include;

- (i) state funding;
- (ii) federal funding;
- (iii) fund raising or booster clubs;
- (iv) game and concession receipts;
- (v) gate receipts;;
- (vi) cash or in-kind donations;
- (vii) grants; and
- (viii) any other sources;

(b) the following information regarding expenditures;

- (i) any capital outlay expenditures for each public school's athletics programs;
- (ii) the expenditures for each public school's athletics programs; and
- (iii) the expenditures of individual teams, including travel expenses such as transportation, meal allowances and overnight accommodations; equipment; uniforms; facilities; facilities improvements; publicity expenses; awards; banquets; insurance; and other expenses incurred by each team;

(c) a statement of benefits and services to each team.

E. Each public school shall:

(1) make the above referenced data available to the public including all materials relied upon to compile the data;

(2) at least annually inform all students attending their school of their right to review the data;

(3) maintain in a retrievable form its data and all materials relied upon to complete the data for at least three years;

(4) annually publish its data in a newspaper of general circulation in the state or make the data available on its publicly accessible website; and

(5) no later than August 31st of each year submit an assurance of compliance with Title 9 to its local school board or governing body and provide a copy to the department.

F. The department shall publish and submit an annual report to the governor and legislature including the following information:

(1) each public school's data;

(2) a list of public schools that did not submit fully completed data;

(3) a list of public school that fail to submit the assurance of compliance with Title 9; and

(4) recommendations on how to increase gender equity in athletics in public schools.

History

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

(01-29-99; 6.13.4.8 NMAC - Rn, 6 NMAC 1.2.3.8, 12-29-00; A, 11-13-09)
HIERARCHY NOTES: See 6.13.4 NMAC

© 2010 by New Mexico School Boards Association

POLICY SERVICES

ADVISORY

Volume 7, Number 5

October 2010

CONTENTS

Policy Advisory No. 76GCQF —Discipline, Suspension, Termination and Discharge of Professional Staff Members
Policy Advisory No. 77GDQD —Discipline, Suspension, Termination and Discharge of Support Staff Members

Policy advisory discussion

Policy Advisory No. 76 - 77. The advisories herein are submitted for each School District's consideration to modify the termination procedure. The current policy meets all of the statutory requirements of New Mexico but with an added step called the Loudermill administrative hearing. It has come to Policy Services attention that the statutory procedure followed by many school districts and recommended by some New Mexico Attorneys does not include the standard Loudermill hearing. Because of this, Policy Services has rewritten the policy containing the termination procedures for both the licensed and non-licensed employee to offer a choice of policy.

The term "terminate" means, in the case of a certified school employee, the act of not reemploying an employee for the ensuing school year and, in the case of a noncertified school employee, the act of severing the employment relationship with the employee. The term stems from Loudermill v. Cleveland Board of Education,

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

in which the United States Supreme Court held that non-probationary civil servants had a property right to continued employment and such employment could not be denied to employees unless they were given an opportunity to hear and respond to the charges against them prior to being deprived of continued employment. This procedure is not exactly the same as the New Mexico procedure found in 22-10A-28 NMSA and may be more due process than is necessary for New Mexico public employees with less than three years employment per the statute. In the process of preparing the policy on termination, New Mexico Policy Services used the procedure outlined by the United States Supreme Court in the *Loudermill v. Cleveland Board of Education*, including the so called *Loudermill* administrative hearing. The New Mexico procedure allows for similar steps but with the requirement that the employee ask for a session with the Board, which would be tantamount to the administrative hearing. The steps from the New Mexico Statute were incorporated into the original policy along with the *Loudermill* procedure. You will find the rewritten policy tracks 22-10A-28 NMSA for termination, the main concern of the rewrite, and maintains the language of the the rest of the "Personnel Act". Should you wish to change your current policy to the shorter New Mexico version of due process on termination, the rewritten policies will provide you with that option.

Those of you that would follow the procedures including the *Loudermill* hearing with the inclusion of the steps required by New Mexico Statute, need not adopt the revised version of the policy containing termination. It would be in the best interest of the School District though, to make sure your legal counsel concurs with the requirement of additional steps by local policy and that the district follow the policy as adopted.

It should not be necessary to discuss the appropriateness of either version since both likely meet the requirements of due process as has been determined by case law. The important thing to mention herein is that it is only necessary to make sure that which ever version your district has or will adopt should be followed and that the staff and legal counsel are made aware of the adoption and the content.

A copy of 22-10A-24 NMSA may be found following the policy in the attached.

If you have any questions, call Policy Services at (505) 469-0193. Ask for Donn Williams, Policy Services Director, or E-mail to the following address [nmsbapolicy@cox.net}.

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

^G-6100

©

GCQF

**DISCIPLINE, SUSPENSION, TERMINATION
AND DISCHARGE OF
PROFESSIONAL STAFF MEMBERS**

Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, a public employer may:

- direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees;
- determine qualifications for employment and the nature and content of personnel examinations;
- take actions as may be necessary to carry out the mission of the public employer in emergencies; and
- retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

For purposes of this policy:

- "Discharge" means the act of severing the employment relationship with a certificated school employee prior to the expiration of the current employment contract.
- "Terminate" means, in the case of a certificated school employee, the act of not reemploying an employee for the ensuing school year.
- "Working day" means every calendar day, excluding Saturday, Sunday or legal holiday.
- "Just cause" means a reason that is rationally related to an employee's competence or turpitude or the proper performance of assigned duties and that is not in violation of the employee's civil or constitutional rights.
- "Administrative leave" means the assignment of an employee to the employee's home to await further instructions pending the outcome of an investigation or inquiry into the actions of the employee in order to avoid

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

interference in the inquiry. The use of "administrative leave" is not a disciplinary action.

Categories of Misconduct

Licensed staff members may be disciplined for infractions that include, but are not limited to, the following categories:

- Engaging in unprofessional conduct.
- Committing fraud in securing appointment.
- Exhibiting incompetency in their work.
- Exhibiting inefficiency in their work.
- Exhibiting improper attitudes.
- Neglecting their duties.
- Engaging in acts of insubordination.
- Engaging in acts of child abuse or child molestation.
- Engaging in acts of dishonesty.
- Being under the influence of alcohol while on duty.
- Engaging in the use, possession, or distribution of narcotics or habit-forming drugs.
- Being absent without leave.
- Engaging in discourteous treatment of the public.
- Engaging in improper political activity.
- Engaging in willful disobedience.
- Being involved in misuse or unauthorized use of school property.
- Being involved in excessive absenteeism.
- Possessing alcohol on school-owned property.
- Carrying or possessing a weapon on school grounds unless they have obtained specific authorization from the appropriate school administrator.

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

- Engaging in ethical misconduct by inappropriate touching, sexual harassment, discrimination or intended behavior to induce a child into engaging in illegal, immoral or other prohibited behavior.

General Provisions for Discipline

General provisions for discipline are as follows:

- *Informal consultation.* Nothing contained herein will limit a supervising administrator's prerogative to engage in informal consultation with a licensed employee to discuss matters of concern related to the employee's performance, conduct, et cetera.
- *Persons authorized to impose discipline.* Any supervising licensed administrator who is the immediate or primary supervisor of a staff member is authorized to impose a penalty or penalties, short of termination.
- *Administrative discretion.* In adopting these policies/procedures, it is the intention of the District that they be interpreted and applied in a reasonable fashion. The policies are not intended to restrict or eliminate the discretion traditionally afforded to supervising administrators to determine whether discipline is appropriate. Administrators are therefore directed to continue to use reasonable discretion in determining whether a particular alleged violation merits discipline.
- *Right not to impose discipline.* The District reserves the right not to discipline a staff member for conduct that violates this policy.
- *Additional reasons for discipline.* A staff member may be disciplined for conduct that has occurred but that, at or near the time of misconduct, was not the subject of or identified as a reason for a specific proceeding under this policy.
- *Amendments.* The District reserves the right to amend this policy in any way at any time. Any amendment shall have prospective application only.
- *Severability.* If any provision of this policy is held to be invalid for any reason, such action shall not invalidate the remainder of this policy. If any provision of this policy conflicts with any provisions in any other policies adopted by the District, the provisions of this policy shall prevail.

Minor Discipline

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

Minor disciplinary action includes, without limitation thereto, removal from grounds, written warning, written reprimand, or suspension. Minor disciplinary action shall be imposed by the staff member's administrative supervisor upon informing the employee of any violations of state or federal statutes, policies, rules or the New Mexico code of ethics and offering a minimum due process hearing and opportunity to express the employee's side of the issue before implementing the disciplinary action. The disciplinary action shall be confirmed in writing to the employee. The discipline may only be appealed to the next level of administration. The hearing procedure shall be as follows.

Step 1 - Notice:

- Upon the supervising administrator's determination of the existence of cause to impose discipline, the supervising administrator shall notify the staff member of intent to impose discipline. The notice shall be in writing and shall be delivered in person or by first-class mail. The notice shall include the following:
 - The conduct or omission on the part of the staff member that constitutes the reason for discipline.
 - A scheduled meeting time between the supervising administrator and the staff member. Such meeting shall be scheduled not more than ten (10) working days after the date the licensed staff member receives the notice.
 - A statement of the disciplinary action the supervising administrator intends to impose.
 - Copies of any available relevant documentation, at the discretion of the supervising administrator.

Step 2 - Hearing:

- At the hearing, the supervising administrator shall discuss with the staff member the conduct that warrants disciplinary action and shall provide the staff member with any appropriate evidence and a copy of relevant documentation if not previously provided.
- The supervising administrator shall conduct the hearing in an informal manner, without adherence to the rules of evidence and procedure required in judicial proceedings.
- A record of the hearing shall be made by electronic recordation.

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

Step 3 - Decision (in writing):

- At the hearing, or within seven (7) working days following the hearing, the supervising administrator shall, in writing, inform the licensed staff member of the decision. If the decision is to impose discipline, written notice of the discipline shall be enclosed.

Appeal of Minor Discipline

A staff member who wishes to object to a minor disciplinary action shall submit a written complaint to the supervisor's superior within five (5) work days of receiving notice of the disciplinary action. Failure to request the hearing in the time frame indicated will be considered acceptance of the discipline imposed. The appeal shall specifically describe the part of the determination with which the staff member disagrees, such as:

- Determination was founded upon error of construction or application of any pertinent regulations or policies.
- Determination was unsupported by any evidence as disclosed by the entire record.
- Determination was materially affected by unlawful procedure.
- Determination was based on violation of any statutory or constitutional right.
- Determination was arbitrary and capricious.
- The penalty was excessive.

The appeal shall be based on the record of the hearing. The supervising administrator, the Superintendent, or, when appropriate, the Board may, at the conclusion of the appeal, uphold the discipline, modify the decision, or refer the matter back to the level from which it was appealed for rehearing and additional information. Such decision, along with specific direction as to the effective date of any discipline, shall be communicated to the staff member within a reasonable amount of time following the appeal, not to exceed seven (7) working days. The decision upon appeal is final for all minor disciplinary actions.

Termination Pursuant to 22-10A-24 NMSA (1978)

The following procedures will be used to impose any termination permitted under 22-10A-24 NMSA (1978) except that it does not apply to:

- A certificated instructor employed to fill the position of a certificated school instructor entering military service;

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 person who is employed as a certificated school administrator; or
- A non-certificated school employee employed to perform primarily District-wide management.

Step 1 - Notice:

- Upon the ~~supervising administrator's~~ Superintendent's determination of the existence of cause to terminate, and not later than fourteen (14) days prior to the last day of the school year, the ~~supervising administrator~~ Superintendent shall notify the staff member of intent to terminate. The notice shall be in writing and shall be delivered in person or by first-class mail to the last address provided for personnel records. The notice shall include the following:
 - ~~The conduct or omission on the part of the staff member that constitutes the reason for termination.~~ The statement that the employee has the right to request written reasons for the decision to terminate and such reasons shall be provided within ten working days of such request.
 - ~~A scheduled meeting time between the supervising administrator and the staff member. Such meeting shall be scheduled not more than five (5) working days after the date the staff member receives the notice.~~

Step 2 - Pre Termination Hearing:

- ~~At the hearing, the supervising administrator shall discuss with the staff member the conduct that warrants notice of termination and shall provide the staff member with written reasons for the decision to terminate.~~
- ~~The supervising administrator shall conduct the hearing in an informal manner, without adherence to the rules of evidence and procedure required in judicial proceedings. The staff member shall be requested to present any rebuttal or reasons the termination should not go forward.~~

Step 3 - Pre Termination Hearing Decision (in writing):

- ~~At the pre-termination hearing, or within five (5) days following the hearing, the supervising administrator shall, in writing, inform the staff member of the decision. If the decision is to recommend termination to the Superintendent, the staff member will be informed in writing. The Superintendent shall notify the staff member if termination is approved. The reasons shall not be publicly disclosed by the administration or Board. For an employee of less than three (3) consecutive years of service the decision is not contestable under the School Personnel Act.~~

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

- For employees with three (3) or more years of service the following appeal procedure shall apply (consult your attorney to determine what constitutes three (3) or more years of service under New Mexico law.)

~~*(Steps 1 through 3 should be followed for all employees)*~~

Step 2-4 - Appeal Requirements and Content:

- Termination may be appealed to the Board by a professional staff employee with three (3) or more consecutive years of service by making a request to the Superintendent within five (5) working days of the date of receipt of the notice of termination requesting a meeting with the Board.
 - The appeal shall be granted if the employee responds to the Superintendent in writing within ten (10) working days of receiving the reasons for termination with the following information:
 - ▲ A statement of contention that the employee believes the decision is without just cause.
 - ▲ A brief statement of the reason(s) why the staff member believes the decision is without just cause.
 - ▲ A statement of the facts that the employee believes support this contention.

Step 5 - Appeal Procedure:

- The Board shall meet to hear the employee's statement in no less than five (5) or more than fifteen (15) working days after receipt of the statement.
- The hearing shall be conducted informally in accordance with the provisions of the Open Meeting Act.
 - Hearing Procedure:
 - ▲ The employee and the Superintendent may each be accompanied by a person of their choice.
 - ▲ The Superintendent shall present the factual basis for determination that just cause exists for the termination, limited to the reasons provided to the employee.

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 employee shall present contentions, limited to the reason(s) why the licensed staff member believes the decision is without just cause.
 - ▲ Rebuttal to the employee's presentation may be presented as deemed relevant by the Board.
 - ▲ Witnesses called may be questioned by the Board, the Superintendent or an appointed representative, and the employee or an appointed representative.
 - ▲ The Board may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable.
 - ▲ No record shall be made of the hearing.
- The Board shall take such action as is necessary in accordance with the Open Meeting Act to uphold or deny the recommendation to terminate. The Board shall notify the employee and the Superintendent of its decision in writing within five (5) working days from the conclusion of the meeting.

Termination - Arbitration Appeal Pursuant to 22-10A-25 NMSA (1978)

An employee still aggrieved by a decision of the Board may appeal the decision to an arbitrator by doing the following:

- Submitting a written appeal to the Superintendent within five (5) working days from receipt of the Board's written decision or refusal to grant a hearing on the issue of termination.
- Accompanying the written appeal shall be a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to subsection E of Section 22-10A-24 NMSA (1978).
- Including in the contentions a statement of facts supporting the contentions.

Failure of the employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify the employee for any appeal and render the Board's decision on termination final.

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

If the arbitration appeal is timely and complete, the Board and the employee shall meet within ten (10) working days from the receipt of the request for an appeal and select an independent arbitrator, qualified in accord with the applicable statute, to conduct the appeal. If the parties fail to agree on an arbitrator, they shall request the presiding judge in the judicial district in which the employee's public school is located to select an independent arbitrator within five (5) working days of the date of the request.

A de novo (new) hearing shall be conducted within thirty (30) working days of selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, sending such notice to the employee and Board.

The parties shall be provided a copy of the relevant portion of this policy which shall include:

- Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the arbitrator.
- The arbitrator may issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and has the power to administer oaths. Subpoenas issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action or in the manner provided by the American Arbitration Association's voluntary labor arbitration rules if that entity is used by the parties.
- The Board shall be required to prove by a preponderance of the evidence that just cause to discharge the employee existed at the time of the notice of intent to discharge the employee by the administration.
- Hearing Procedure:
 - The employee and the Board may each be accompanied by counsel.
 - The Board shall present the basis for determination that just cause exists for the discharge.
 - The employee shall present reason(s) why the recommendation is without just cause.
 - Either party shall be permitted to call witnesses and to introduce documentary evidence.

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

- Witnesses called may be questioned by the Board or a representative, and the employee or a representative.
 - Technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of the statements or records tendered, the accuracy of truth of which is in reasonable doubt.
 - A record shall be made of the hearing and each party may order the record at the expense of the party.
- The arbitrator shall notify the employee and the Board of the decision in writing within ten (10) working days from the conclusion of the arbitration hearing. The decision shall contain findings of fact and conclusions of law affirming or reversing the action of the Board.

The parties shall be guided by the statute and arbitrator as to the conduct of the hearing, each party bearing its own costs. The arbiter's fees and other expenses in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

No official record shall be made of the proceeding but the party desiring a record may arrange for a record, paying the expense.

Discharge per 22-10A-27 NMSA (1978)

A certificated employee may be discharged only for just cause following procedures as indicated below:

Notice:

- Upon the Superintendent's determination of the existence of cause to discharge, the Superintendent shall notify the licensed staff member of intent to recommend discharge. The notice shall state the cause for the recommendation and shall advise the employee of a right to a discharge hearing before the Board.
- The notice shall be in writing and shall be provided in accordance with the law for service of process in civil actions.

Employee's Request for Hearing:

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

- An employee who receives notice of intent to recommend discharge may exercise the right to a hearing before the Board by giving the Superintendent written notice of that election within five (5) working days of receipt of the notice of recommendation.
- The Board shall hold a discharge hearing no less than twenty (20) and no more than forty (40) working days after the receipt of the staff member's election of a hearing.

Preliminary Information

- At least ten (10) days written notice of the date, time and place of the discharge hearing shall be provided to the employee with such notice in the same form as used in civil proceedings. The notice shall indicate the following:
 - Both the Superintendent and the certificated school employee may be accompanied by a person of their choice.
 - Each party is to complete and respond to discovery by deposition and production of documents prior to the hearing date established.
 - The Board may issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and has the power to administer oaths.
 - The administration shall be required to prove by preponderance of the evidence that just cause to discharge the certificated employee existed at the time of the notice of intent to discharge.
 - Procedure for the conduct of the hearing shall be as follows:
 - ▲ The Superintendent shall present the factual basis for determination that just cause exists for the termination based upon information available at the time the employee was given notice of the intent to discharge.
 - ▲ The employee shall present reason(s) why the recommendation is without just cause.
 - ▲ Either party shall be permitted to call witnesses and to introduce documentary evidence.

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

- ▲ Witnesses called may be questioned by the Superintendent or an appointed representative, and the employee or an appointed representative.
- ▲ The Board may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable.
- ▲ A record shall be made of the hearing and each party may have one (1) copy of the record at the expense of the Board.
- The Board shall notify the employee and the Superintendent of its decision in writing within twenty (20) days from the conclusion of the hearing. The Board shall take such action as is necessary in accordance with the Open Meeting Act.

Discharge -Arbitration Appeal Pursuant to 22-10A-27 NMSA (1978)

An employee aggrieved by a decision of the Board to discharge may appeal the decision to an arbitrator by doing the following: Submitting a written appeal to the Superintendent within five (5) calendar days from receipt of the notice of discharge by the Board to the employee.

If the arbitration appeal is timely the Board and the employee shall meet within ten (10) working days from the receipt of the request for an appeal and select an independent arbitrator, qualified in accord with the applicable statute, to conduct the appeal. If the parties fail to agree on an arbitrator, they shall request the presiding judge in the judicial district in which the employee's public school is located to select an independent arbitrator within five (5) working days of the date of the request.

The hearing shall be conducted within thirty (30) working days of selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, sending such notice to the employee and Board.

The parties shall be provided a copy of the relevant portion of this policy which shall include:

- Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the arbitrator.

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 arbitrator may issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and has the power to administer oaths. Subpoenas issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action or in the manner provided by the American Arbitration Association's voluntary labor arbitration rules if that entity is used by the parties.
- The Board shall be required to prove by preponderance of the evidence that just cause to discharge the certificated employee existed at the time of the notice of intent to discharge the employee by the administration.
- Hearing Procedure:
 - The employee and the Board may each be accompanied by counsel.
 - The Board shall present the basis for determination that just cause exists for the discharge.
 - The employee shall present reason(s) why the recommendation is without just cause.
 - Either party shall be permitted to call witnesses and to introduce documentary evidence.
 - Witnesses called may be questioned by the Board or a representative, and the employee or a representative.
 - Technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of the statements or records tendered, the accuracy of truth of which is in reasonable doubt.
 - A record shall be made of the hearing and each party may order the record at the expense of the party.
- The arbitrator shall notify the employee and the Board of the decision in writing within thirty (30) working days from the conclusion of the arbitration hearing. The decision shall contain findings of fact and conclusions of law affirming or reversing the action of the Board.

Each party shall bear its own costs.

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 arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be assigned at the discretion of the arbitrator.

Additional Provisions and Conditions

During the pendency of any hearing, neither the licensed staff member nor the supervising administrator shall contact the Superintendent or a Board member to discuss the merits of the supervising administrator's recommendation except as provided by this policy.

This policy addresses only discipline, termination or discharge and has no application to any of the following:

- Letters or memorandums directed to a licensed staff member containing directives or instructions for future conduct.
- Counseling of a licensed staff member concerning expectations of future conduct.
- Placing an employee on administrative leave with pay and assignment of the employee to home during work hours in order to conclude a review of the employee's actions or activities pending an administrative recommendation.

The Board shall file annually a record with the Secretary of Education of all terminations and all actions arising from terminations.

Adopted: date of manual adoption

LEGAL REF.: 10-7E-1 to 10-7E-26 NMSA (1978) Public Employee
Bargaining Act
10-15-1 NMSA (1978) Open Meeting Act
22-10A-5 NMSA (1978)
22-10A-24 NMSA (1978)
22-10A-25 NMSA (1978)
22-10A-26 NMSA (1978)
22-10A-27 NMSA (1978) Discharge hearing; procedures
22-10A-28 NMSA (1978) Appeals; independent arbitrator;
qualifications; procedure; binding decision
22-10A-29 NMSA (1978) Compensation payments to
discharged personnel
22-10A-30 NMSA (1978) Supervision and correction
procedures
22-10A-31 NMSA (1978) Denial, suspension and revocation

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

of licenses
22-10A-32 NMSA (1978) Licensed school employees; required
training program
6.60.9.9 NMAC Standards of Professional Conduct
6.60.9.12 NMAC Reporting Requirements
6.67.2.8 NMAC Notice of reemployment or termination of
licensed personnel

CROSS REF.: DKA - Payroll Procedures/Schedules
GBEB - Staff Conduct

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

G-9300

©

GDQD

**DISCIPLINE, SUSPENSION, TERMINATION
AND DISCHARGE OF
SUPPORT STAFF MEMBERS**

Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, a public employer may:

- direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees;
- determine qualifications for employment and the nature and content of personnel examinations;
- take actions as may be necessary to carry out the mission of the public employer in emergencies; and
- retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

For purposes of this policy:

- "Terminate" means, in the case of a noncertificated school employee, the act of severing the employment relationship with the employee.
- "Working day" means every calendar day, excluding Saturday, Sunday or legal holiday.
- "Administrative leave" means the assignment of an employee to the employee's home to await further instructions pending the outcome of an investigation or inquiry into the actions of the employee in order to avoid interference in the inquiry. The use of "administrative leave" is not a disciplinary action.

Categories of Misconduct

Staff members may be disciplined for infractions that include, but are not limited to, the following categories:

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

- Absence without leave
- Abuse of leave
- Alcohol or drug impairment
- Child abuse or molestation
- Discourteous treatment of the public
- Dishonesty
- Excessive absenteeism
- Fraud in securing employment
- Improper attitude
- Incompetence or inefficiency
- Insubordination
- Neglect of duty
- Unauthorized possession of a weapon on school grounds
- Unauthorized use of school property
- Unlawful conduct
- Use of illegal drugs
- Violation of a directive of a supervisor
- Violation of a District policy or regulation

General Provisions for Discipline are as follows:

- *Informal consultation.* Nothing contained herein will limit a supervising administrator's prerogative to engage in informal consultation with an employee to discuss matters of concern related to the employee's performance, conduct, etc.
- *Persons authorized to impose discipline.* Any supervising licensed administrator who is the immediate or primary supervisor of a staff member is authorized to impose a penalty or penalties, short of termination.
- *Administrative discretion.* In adopting these policies/procedures, it is the intention of the District that they be interpreted and applied in a reasonable fashion. The policies are not intended to restrict or eliminate the discretion traditionally afforded to supervising administrators to determine whether discipline is appropriate. Administrators are therefore directed to continue to use reasonable discretion in determining whether a particular alleged violation merits discipline.
- *Right not to impose discipline.* The District reserves the right not to discipline a staff member for conduct that violates this policy.
- *Additional reasons for discipline.* A staff member may be disciplined for conduct that has occurred but that, at or near the time of misconduct, was not the subject of or identified as a reason for a specific proceeding under this policy.
- *Amendments.* The District reserves the right to amend this policy in any way at any time. Any amendment shall have prospective application only.

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

- *Severability.* If any provision of this policy is held to be invalid for any reason, such action shall not invalidate the remainder of this policy. If any provision of this policy conflicts with any provisions in any other policies adopted by the District, the provisions of this policy shall prevail.

Minor Discipline

Minor disciplinary action includes, without limitation thereto, removal from the grounds, written warning, written reprimand, or suspension. Minor disciplinary action shall be imposed by the staff member's administrative supervisor upon informing the employee of any violations of state or federal statutes, policies, rules or the New Mexico code of ethics and offering a hearing and opportunity to express the employee's side of the issue before implementing the disciplinary action. The disciplinary action shall be confirmed in writing to the employee. The discipline may only be appealed to the next level of administration. The hearing procedure shall be as follows.

Step 1 - Notice and Hearing:

- Upon the supervising administrator's determination of the existence of cause to impose discipline, the supervising administrator shall notify the staff member of intent to impose discipline, the conduct or omission on the part of the staff member that constitutes the reason for discipline, and provide the employee an opportunity to explain the employee's side of the issue. A reasonable effort to determine the circumstances of the incident will be made. The discipline may be imposed immediately or following any further investigation.

Step 2- Decision (in writing):

- At the hearing, or within seven (7) working days following the hearing, the supervising administrator shall inform the employee in writing of the disciplinary action, if imposed and summarize the discussion at the hearing.

Appeal of Minor Discipline

A staff member who wishes to object to a minor disciplinary action shall submit a written appeal request to the supervisor's superior within five (5) work days of receiving notice of the disciplinary action. Failure to request the appeal in the time frame indicated will be considered acceptance of the discipline imposed. The discipline shall be suspended if the appeal is timely made. The appeal shall specifically describe the part of the determination with which the staff member disagrees, such as:

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

- Determination was founded upon error of construction or application of any pertinent regulations or policies.
- Determination was unsupported by any evidence as disclosed by the entire record.
- Determination was materially affected by unlawful procedure.
- Determination was based on violation of any statutory or constitutional right.
- Determination was arbitrary and capricious.
- The penalty was excessive.

The appeal shall be based on the staff member's submission as listed above and the summary of the hearing made by the supervisor. The supervising administrator, the Superintendent, or, when appropriate, the Board may, at the conclusion of the appeal, uphold the discipline, modify the decision, or refer the matter back to the level from which it was appealed for rehearing and additional information. Such decision, along with specific direction as to the effective date of any discipline, shall be communicated to the staff member within a reasonable amount of time following the appeal, not to exceed seven (7) working days. The decision upon appeal is final for all minor disciplinary actions.

Termination Pursuant to 22-10A-24 NMSA (1978)

The following procedures will be used to impose any termination permitted under 22-10A-24 NMSA (1978) except that it does not apply to:

- A noncertificated school employee employed to perform primarily District-wide management. (22-10A-26 NMSA)

Step 1 - Notice:

- Upon the supervising administrator's determination of the existence of cause to terminate, the supervising administrator shall notify the staff member of intent to terminate. The notice shall be in writing and shall be delivered in person or by first-class mail. The notice shall include the following:
 - ~~The conduct or omission on the part of the staff member that constitutes the reason for termination.~~ The statement that the employee has the

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

right to request written reasons for the decision to terminate and such reasons shall be provided within ten working days of such request.

- ~~A scheduled meeting time between the supervising administrator and the staff member. Such meeting shall be scheduled not more than five (5) working days after the date the staff member receives the notice.~~

Step 2 – Pre Termination Hearing:

- ~~At the hearing, the supervising administrator shall discuss with the staff member the conduct that warrants notice of termination and shall provide the staff member with written reasons for the decision to terminate.~~
- ~~The supervising administrator shall conduct the hearing in an informal manner, without adherence to the rules of evidence and procedure required in judicial proceedings. The staff member shall be requested to present any rebuttal or reasons the termination should not go forward.~~

Step 3 – Pre Termination Hearing Decision (in writing):

- ~~At the pre-termination hearing, or within five (5) days following the hearing, the supervising administrator shall, in writing, inform the staff member of the decision. If the decision is to terminate, written notice shall be enclosed. The reasons shall not be publicly disclosed by the administration or Board. For an employee of less than three (3) consecutive years of service the decision is not contestable under the School Personnel Act.~~
 - For employees with three (3) or more years of service the following appeal procedure shall apply (consult your attorney to determine what constitutes three (3) or more years of service under New Mexico law.)

Steps one (1) through three (3) should be followed for all employees.

Step 4 - Appeal Requirements and Content:

- Termination may be appealed to the Board by an employee with three (3) consecutive years of service by making a request to the Superintendent within five (5) working days of the date of receipt of the notice of termination requesting reasons for the termination decision and a meeting with the Board.

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 appeal shall be granted if the employee responds to the Superintendent in writing within ten (10) working days of receiving the reasons for termination with the following information:
 - ▲ A statement of contention that the employee believes the decision is without just cause.
 - ▲ A brief statement of the reason(s) why the staff member believes the decision is without just cause.
 - ▲ A statement of the facts that the employee believes support this contention.

Step 4 - Appeal Procedure:

- The Board shall meet to hear the employee's statement in no less than five (5) or more than fifteen (15) working days after receipt of the statement.
- The hearing shall be conducted informally in accordance with the provisions of the Open Meeting Act.
 - Hearing Procedure:
 - ▲ The employee and the Superintendent may each be accompanied by a person of their choice.
 - ▲ The Superintendent shall present the factual basis for determination that just cause exists for the termination, limited to the reasons provided to the employee.
 - ▲ The employee shall present contentions, limited to the reason(s) why the staff member believes the decision is without just cause.
 - ▲ Rebuttal to the employee's presentation may be presented as deemed relevant by the Board.
 - ▲ Witnesses called may be questioned by the Board, the Superintendent or an appointed representative, and the employee or an appointed representative.
 - ▲ The Board may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable.
 - ▲ No record shall be made of the hearing.

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 Board shall notify the employee and the Superintendent of its decision in writing within five (5) working days from the conclusion of the meeting.

The Board shall take such action as is necessary in accordance with the Open Meeting Act to uphold or deny the recommendation to terminate. Such decision, shall be communicated to the staff member within a reasonable amount of time following the appeal, not to exceed five (5) working days.

Termination - Arbitration Appeal Pursuant to 22-10A-25 NMSA (1978)

An employee still aggrieved by a decision of the Board may appeal the decision to an arbitrator by doing the following:

- Submitting a written appeal to the Superintendent within five (5) working days from receipt of the Board's written decision or refusal to grant a hearing on the issue of termination.
- Accompanying the written appeal shall be a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to subsection E of Section 22-10A-24 NMSA (1978).
- Including in the contentions a statement of facts supporting the contentions.

Failure of the employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify the employee for any appeal and render the Board's decision on termination final.

If the arbitration appeal request is timely and complete, the Board and the employee shall meet within ten (10) working days from the receipt of the request for an appeal and select an independent arbitrator, qualified in accord with the applicable statute, to conduct the appeal. If the parties fail to agree on an arbitrator, they shall request the presiding judge in the judicial district in which the employee's public school is located to select an independent arbitrator within five (5) working days of the date of the request.

A de novo (new) hearing shall be conducted within thirty (30) working days of selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, sending such notice to the employee and Board.

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 parties shall be provided a copy of the relevant portion of this policy which shall include:

- Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the arbitrator.
- The arbitrator may issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and has the power to administer oaths. Subpoenas issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action or in the manner provided by the American Arbitration Association's voluntary labor arbitration rules if that entity is used by the parties.
- The Board shall be required to prove by a preponderance of the evidence that just cause to discharge the employee existed at the time of the notice of intent to discharge the employee by the administration.
- Hearing Procedure:
 - The employee and the Board may each be accompanied by counsel.
 - The Board shall present the basis for determination that just cause exists for the discharge.
 - The employee shall present reason(s) why the recommendation is without just cause.
 - Either party shall be permitted to call witnesses and to introduce documentary evidence.
 - Witnesses called may be questioned by, the Board or a representative, and the employee or a representative.
 - Technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of the statements or records tendered, the accuracy of truth of which is in reasonable doubt.
 - A record shall be made of the hearing and each party may order the record at the expense of the party.
- The arbitrator shall notify the employee and the Board of the decision in writing within ten (10) working days from the conclusion of the arbitration

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

hearing. The decision shall contain findings of fact and conclusions of law affirming or reversing the action of the Board.

The parties shall be guided by the statute and arbitrator as to the conduct of the hearing, each bearing their own costs. The arbiter's fees and other expenses in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

No official record shall be made of the proceeding but the party wishing a record may arrange for a record, paying the expense.

Adopted: date of manual adoption

LEGAL REF.: 22-10A-24 NMSA (1978)
22-10A-25 NMSA (1978)
22-10A-26 NMSA (1978)

CROSS REF.: DKA - Payroll Procedures/Schedules

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

RELEVANT STATUTE

22-10A-22. Notice of reemployment; termination (LEGISYR=2003).

Statute text

On or before the last day of the school year of the existing employment contract, the local school board or the governing authority of the state agency shall serve written notice of reemployment or termination on each certified school instructor employed by the school district or state agency. A notice of reemployment shall be an offer of employment for the ensuing school year. A notice of termination shall be a notice of intention not to reemploy for the ensuing school year. Failure of the local school board or the governing authority of the state agency to serve a written notice of reemployment or termination on a certified school instructor shall be construed to mean that notice of reemployment has been served upon the person for the ensuing school year according to the terms of the existing employment contract but subject to any additional compensation allowed other certified school instructors of like qualifications and experience employed by the school district or state agency. Nothing in this section shall be construed to mean that failure of a local school board or the governing authority of the state agency to serve a written notice of reemployment or termination shall automatically extend a certified school instructor's employment contract for a period in excess of one school year.

History

(History: 1953 Comp., § 77-8-9, enacted by Laws 1967, ch. 16, § 114; 1975, ch. 306, § 8; 1986, ch. 33, § 20; 1978 Comp., § 22-10-12, recompiled as 1978 Comp., § 22-10A-22 by Laws 2003, ch. 153, § 72.)

22-10A-24. Termination decisions; local school board; governing authority of a state agency; procedures (LEGISYR=2003).

Statute text

A. A local school board or governing authority of a state agency may terminate an employee with fewer than three years of consecutive service for any reason it deems sufficient. Upon request of the employee, the superintendent or administrator shall provide written reasons for the decision to terminate. The reasons shall be provided within ten working days of the request. The reasons

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

shall not be publicly disclosed by the superintendent, administrator, local school board or governing authority. The reasons shall not provide a basis for contesting the decision under the School Personnel Act [22-10A-1 NMSA 1978].

B. Before terminating a non-certified school employee, the local school board or governing authority shall serve the employee with a written notice of termination.

C. An employee who has been employed by a school district or state agency for three consecutive years and who receives a notice of termination pursuant to either Section 22-10-12 NMSA 1978 [recompiled] or this section, may request an opportunity to make a statement to the local school board or governing authority on the decision to terminate him by submitting a written request to the local superintendent or administrator within five working days from the date written notice of termination is served upon him. The employee may also request in writing the reasons for the action to terminate him. The local superintendent or administrator shall provide written reasons for the notice of termination to the employee within five working days from the date the written request for a meeting and the written request for the reasons were received by the local superintendent or administrator. Neither the local superintendent or administrator nor the local school board or governing authority shall publicly disclose its reasons for termination.

D. A local school board or governing authority may not terminate an employee who has been employed by a school district or state agency for three consecutive years without just cause.

E. The employee's request pursuant to Subsection C of this section shall be granted if he responds to the local superintendent's or administrator's written reasons as provided in Subsection C of this section by submitting in writing to the local superintendent or administrator a contention that the decision to terminate him was made without just cause. The written contention shall specify the grounds on which it is contended that the decision was without just cause and shall include a statement of the facts that the employee believes support his contention. This written statement shall be submitted within ten working days from the date the employee receives the written reasons from the local superintendent or administrator. The submission of this statement constitutes a representation on the part of the employee that he can support his contentions and an acknowledgment that the local school board or governing authority may offer the causes for its decision and any relevant data in its possession in rebuttal of his

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

contentions.

F. A local school board or governing authority shall meet to hear the employee's statement in no less than five or more than fifteen working days after the local school board or governing authority receives the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act [10-15-1.1 NMSA 1978]. The employee and the local superintendent or administrator may each be accompanied by a person of his choice. First, the superintendent shall present the factual basis for his determination that just cause exists for the termination of the employee, limited to those reasons provided to the employee pursuant to Subsection C of this section. Then, the employee shall present his contentions, limited to those grounds specified in Subsection E of this section. The local school board or governing authority may offer such rebuttal testimony as it deems relevant. All witnesses may be questioned by the local school board or governing authority, the employee or his representative and the local superintendent or administrator or his representative. The local school board or governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable. No record shall be made of the proceeding. The local school board or governing authority shall notify the employee and the local superintendent or administrator of its decision in writing within five working days from the conclusion of the meeting.

History

(History: 1953 Comp., § 77-8-11, enacted by Laws 1967, ch. 16, § 116; 1975, ch. 306, § 10; 1979, ch. 86, § 1; 1983, ch. 103, § 1; reenacted by Laws 1986, ch. 33, § 22; 1987, ch. 320, § 5; 1990, ch. 90, § 2; 1991, ch. 187, § 4; 1993, ch. 226, § 27; 1994, ch. 110, § 2; 1978 Comp., § 22-10-14, recompiled as 1978 Comp., § 22-10A-24 by Laws 2003, ch. 153, § 72.)

Annotations

22-10A-27. Discharge hearing; procedures (LEGISYR=2003).

Statute text

A. A local school board or the governing authority of a state agency may discharge a certified school employee only for just cause according to the following procedure:

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

(1) the superintendent shall serve a written notice of his intent to recommend discharge on the certified school employee in accordance with the law for service of process in civil actions; and

(2) the superintendent shall state in the notice of his intent to recommend discharge the cause for his recommendation and shall advise the certified school employee of his right to a discharge hearing before the local school board or governing authority as provided in this section.

B. A certified school employee who receives a notice of intent to recommend discharge pursuant to Subsection A of this section may exercise his right to a hearing before the local school board or governing authority by giving the local superintendent or administrator written notice of that election within five working days of his receipt of the notice to recommend discharge.

C. The local school board or governing authority shall hold a discharge hearing no less than twenty and no more than forty working days after the local superintendent or administrator receives the written election from the certified school employee and shall give the certified school employee at least ten days written notice of the date, time and place of the discharge hearing.

D. Each party, the local superintendent or administrator and the certified school employee, may be accompanied by a person of his choice.

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

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

G. The local superintendent or administrator shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, he had just cause to discharge the certified school employee.

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

H. The local superintendent or administrator shall present his evidence first, with the certified school employee presenting his evidence thereafter. The local school board or governing authority shall permit either party to call, examine and cross-examine witnesses and to introduce documentary evidence.

I. An official record shall be made of the hearing. Either party may have one copy of the record at the expense of the local school board or governing authority.

J. The local school board shall render its written decision within twenty days of the conclusion of the discharge hearing.

History

(History: 1953 Comp., § 77-8-14, enacted by Laws 1967, ch. 16, § 119; 1975, ch. 306, § 12; reenacted by Laws 1986, ch. 33, § 24; 1989, ch. 281, § 1; 1990, ch. 90, § 4; 1991, ch. 187, § 7; 1978 Comp., § 22-10-17, recompiled as 1978 Comp., § 22-10A-27 by Laws 2003, ch. 153, § 72.)

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