

**POLICY SERVICES**

**ADVISORY**

Volume 8, Number 1

January 2011

**CONTENTS**

Policy Advisory No. 78 ----- IJOC —Volunteers  
----- IJOC-R—Volunteers  
----- IJOC-E—Volunteers

Policy Advisory No. 79 ----- KF —Community Use of School Facilities  
----- KF-R— Community Use of School Facilities  
----- KF-EA— Community Use of School Facilities  
----- KF-EB— Community Use of School Facilities

**Policy advisory discussion**

**Introductory Comments.** This advisory, containing suggested policies, regulations and exhibits for volunteers and use of facilities, has been delayed as Policy Services has attempted to obtain the cooperation of the New Mexico Public School Insurance Authority (NMPSIA) to modify the requirements of their regulations on these subjects. The statute ( 22-29-7 NMSA) giving NMPSIA authority to make rules "...provided that the policy shall relate only to liability and risk issues and shall not affect the rights and responsibilities of local school boards to determine how, when and by whom School District facilities are used..." and also contained the statement that the insurance coverage of one million dollars per occurrence "...shall only apply if the participating member was following the policy

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

adopted by the authority." The rules issued by NMPSIA went beyond the liability and risk issues, and will cause extensive increase in the administrative and supervisory requirements in these areas, such that the districts will be absorbing the cost that insurance was supposed to have covered, decreasing the liability of the insurance carrier and increasing the expenditure of scarce educational resources.

A petition to amend or repeal the rules with arguments was filed by Policy Services Director Donn Williams. NMPSIA has exhibited a refusal to comply with the statutory requirements of the Administrative Procedures Act, particularly 12-8-7 providing that " Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule and may accompany his petition with data, views and arguments he thinks pertinent. Within thirty days after the submission of a petition, the agency either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with Section 4 [12-8-4 NMSA 1978] of the Administrative Procedures Act. (emphasis added)" Since NMPSIA has not properly responded to the petition, should a district experience a denial of insurance coverage because of a failure to comply with NMPSIA regulations, Policy Services suggests that it may be appropriate for the district to contest such a denial for failure to comply citing NMPSIA's violation of the Administrative Procedures Act and exceeding its statutory authority as having been the cause for the insurance company to deny payment for loss. Policy Services will provide the evidence of submission of a petition containing data, views and arguments and requesting action which demonstrates the violation by NMPSIA.

The Policies, regulations and exhibits below are an attempt to provide the guidance needed to minimize risk to school districts, but due to the lack of understanding demonstrated by NMPSIA of the many statute and regulatory requirements and permissions under which a district operates, these writings may conflict with other policies and practices.

***Policy Advisory No. 78.*** IJOC and IJOC-R titled Volunteers is being revised to provide guidance on performance of a background investigation on volunteers and how to accomplish the background check. A *background investigation* is generally defined as any communication about an applicant that concerns the education, training, experience, qualifications, and job performance of the individual that is used for the purpose of evaluation for employment. Under the Public Insurance Authority regulatory requirements it must include the results of a state or federal criminal history records check per 6.50.18.8 NMAC. Depending upon whether the volunteer is for a support staff position or one requiring a license, the application and approval of a volunteer should follow the current district policies regarding employment found in Policy GCE and GDE, Professional Staff Hiring and Support Staff Hiring. Additionally, the Public School Insurance Authority requires that all

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

volunteers be interviewed, provided a job description specifying duties, times and qualifications as well as training, supervision and evaluation. The policy goes on to require that volunteers be made aware of and follow conduct, privacy, discipline, supervision and ethics requirements found in policy and be notified that their services may be terminated for violations of these requirements. The regulation specifies who makes the assignments and the type of assignments with which volunteers may normally be involved. An exhibit has been added containing a volunteer pledge and notice that, in accord with 6.50.18.8 NMAC, must be accepted in writing (signed) by each volunteer.

There are a number of companies that perform background searches for businesses that might be considered for use by School Districts. Though there is a cost involved, it may be in the best interest of the district to make such an investment of resources. By simply entering the words "background check" into Google or Bing on your computer browser you will be able to select among a number of commercial companies performing such services. Failing to perform such background searches could leave the schools open to accusations of failure to protect or screen and the litigation associated with such charges particularly now that NMPSIA has established regulations with such detailed requirements.

The Public School Insurance Authority had already recognized volunteers as employees in the year 2000 for purposes of coverage under 6.50.16.7 (F) as follows: " 'employee' means a person employed by a member School District or other participating entity, or the employees' representatives in the event of legal incapacity, and includes volunteers or officials entitled to protection under the Tort Claims Act, & sect; 41-4-3 F, NMSA 1978." It should be no stretch to then assume that a criminal records check in accord with 22-10A-5 (C) NMSA would also be appropriate as a district "...shall develop policies and procedures to require background checks on an applicant who has been offered employment..."

***Policy Advisory No. 79.*** Little is provided in Statute to guide school districts in the lease and rental of school real and personal property. Under 22-5-4 (D) School Boards are given the authority to acquire, lease and dispose of property. 22-29-7 NMSA, on the other hand, gives the New Mexico Public School Insurance Authority (NMPSIA) the power to establish a policy relating to the use of school facilities by private persons with a limit of one million dollars coverage per occurrence which will only apply if the participating member was following the policy of the authority.

NMPSIA established the rules per the statute above at 6.50.17 NMSA. It also established an application and site use agreement that parallels the rules. You will find the application and site use agreement below at exhibit KF-EA. The insurance issue is important since the legislature required that the participating districts follow the policy adopted by NMPSIA in order to be covered. Therefore,

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

districts should make sure they comply with the rules and this should be possible by following the application and use agreements provided by NMPSIA and inserted herein. An exact copy of the forms could not be duplicated in this advisory due to formatting difficulties between computer applications but the form below is substantially correct. An exact copy may be obtained at the NMPSIA site on line.

The major problems found in preparing the use policy were not related to the insurance application, however. Statute does not require the lease of property but permits the lease and use of school property at the discretion of the Board. The significant aspect of this policy is the determination of those who get favored status by being designated as users not required to compensate the District. Because there may be a number of possible users of school facilities and equipment who believe their functions are within those for which the school should allow uncompensated school property use, the likelihood is great that both the uncompensated use and reasonable use fee will be litigious issues. The litigation on such issues was based upon religious discrimination in the past but has in recent years shifted to view-point discrimination. Recent cases have been based upon schools not allowing religious groups to use the school facilities for educationally related uses even though the religious groups did not promote or proselytize their religious beliefs. It is the School District's role to remain neutral toward religion. This appears to be the most difficult factor in determining the no cost or preferential use of facilities. The problems fall into these areas:

- developing guidance as to what uses are considered similar to educational use so that those organizations providing educationally related activities that enhance the education programs may be encouraged,
- establishing which users may be given uncompensated use if their use is enhancing education programs,
- developing a reasonable use fee, a cost for use of specific facilities by period so that there are no classroom education funds used to support the leasing process ( i.e. not using educational funds to support the activities of non school groups); and
- preparing a list of compensated and uncompensated users with reasonable use fees and keeping the fee structure viewpoint neutral,

### **Uncompensated Use and the Mission Statement**

Establishing the uncompensated use group requires the determination of (1) which groups are school related groups and (2) which organizations have membership that is open to the public and whose organizational activities promote the educational function of the School District as determined in good faith by the Board or the Superintendent with the approval of the Board. The challenge is to determine

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

what uses of the facilities and equipment are directly related to the mission statement of the School District. This determination will lead to the uncompensated use category of users who will be listed in the fee schedule. Once this list is determined, the other user categories fall into place.

New Mexico School Boards Association Policy Services (NMSBAPS) has recommended a very simple mission statement be included in the Community Use of School Facilities Policy based upon NMSA 22-13 Titled: Subject areas; minimum instructional areas required; accreditation, and as used in policy IHA Basic Instructional Program. The statement may read as follows:

"The mission of the District is to provide comprehensive, success-oriented learning activities for young people in our schools. These opportunities must be designed to develop the person's potential in the areas of academic ability and vocational awareness, cultural appreciation, physical well-being, social development, and community contribution."

The first thing that might be drawn from this mission statement is that the focus is on the young people in the school for which the mission statement was written. It can then be said that if this mission statement is in effect, the primary uses directly related to the education mission would be uses involving the young people in the leasing School District. Uncompensated use would be given to those uses that involve the young people in the schools, that are comprehensive, success-oriented activities, designed to develop the child's potential in the areas of academic ability, vocational awareness, cultural appreciation, physical well-being, social development, and community contribution. It falls on the Board, perhaps through the Superintendent, to determine which of the activities of groups or organizations promote these uses. Note that uncompensated use is permitted by "any school related group,...or by any organization whose membership is open to the public and whose activities promote the educational function of the School District..." This does not include individuals.

It should quickly become clear that in all probability it will be very difficult to determine which organizations other than school related groups may qualify for use of school property without compensation. The more specific the mission statement the easier it will be to determine an "educational function." The implication is that the determination will provide the fertile ground for questioning the decisions and therefore increase the probability of conflict. The model we have presented for Community Use of School Facilities is general but contains the basic necessities. The mission statement was included for your review. Your own mission statement should be developed with review by counsel in order to prepare for the inevitable challenge.

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

## Keeping the Fee Structure Viewpoint Neutral

The policy contains a cross reference to the policy on non-discrimination/equal opportunity. There is no reason to restate that which is already the policy of the District. In making the determination regarding uncompensated use or reasonable use fees, therefore, the decision should be viewpoint neutral and not influenced by the affiliation of the organization. As indicated below, the fee can be what the District would like but not less than a minimum. Establish a fee that will compensate the District for the use and apply it equally to all those who are similarly situated.

## A Reasonable Use Fee and Schedule

'Reasonable use fee' means an amount that is at least equal to the School District's cost for utilities, services, supplies, or personnel that the school provides to the lessee pursuant to the terms of the lease." If the District not determined costs related to use of these items, it will be in the best interest of your student population to do so. In the recommended policy, it is made clear that even those allowed uncompensated use are to pay reasonable use fees if there is substantial cost to the District associated with the grant of use. This determination is based upon a reasonable assessment of cost and is an attempt to avoid the use of scarce educational dollars by groups and organizations who may not concern themselves with conserving educational resources.

Establishing a schedule, once the analysis of costs has been accomplished, allows the District to quickly calculate the fees. Keep in mind that the reasonable use fee is *at least equal to costs*. This does not mean the use fee must be at cost. It means it must be reasonable and no less than cost. Continue to be careful about differentiating fees because of the non-discrimination/equal opportunity requirement. The suggestions that have been included in the exhibit have been differentiated as follows:

- Class I – School-sponsored and non-fund-raising non-profit groups that are specified by law or involve a majority of students from the District. If a substantive cost is involved then we suggest the District charge them the minimum determined fee but do charge them if there is noticeable cost to the District Budget.
- Class II – Groups and organizations that for the most part do not involve only students from the District and/or will not likely perform educational related functions for District students.
- Class III - Commercial or profit making organizations.

*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 copy of the laws and regulations that may affect the policies as referenced in the above discussions can be found at the bottom of this advisory.**

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.

I-6600

©

IJOC

## SCHOOL VOLUNTEERS

Volunteers can make many valuable contributions to the students and educational programs of the District. A volunteer program is approved subject to suitable rules, safeguards, and regulations as developed by the Superintendent.

In order to protect the safety and security of children and school staff, any volunteer given access to students without the presence (line of site view) of a licensed staff member shall have a background and criminal history check, with the results received prior to allowing the volunteer such access. Volunteer applicants must submit to a background investigation by completing an application form and background consent form in accord with current district policy. If a background check conducted from these criteria fails to return all necessary information, a background check using fingerprints may be conducted.

Volunteers are to be made aware of and comply with all district policies and procedures relevant to the performance of volunteer duties including but not limited to conduct, privacy, discipline, supervision and ethics. Each volunteer will be provided with a job description of duties, time requirements and qualifications, and be provided training, supervision and evaluation.

This policy shall not apply to:

(1) adults who visit a school but have no ongoing individualized interaction with a student or students, including, but not limited to, adults who have been invited to speak tot a class or assembly, to judge academic competitions, to give a musical performance, or to participate in a sponsored program;

(2) a parent or legal guardian who is accompanying his or her child's class on a one-day field trip or on another type of occasional extra-curricular activity that does not involve an overnight stay.

*Adopted:* date of manual adoption

LEGAL REF.: 22-10A-5 NMSA (1978)  
6.50.18 NMAC

CROSS REF.: GBEB - Staff Conduct  
GCF - Professional Staff Hiring

*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**



GDF - Support Staff Hiring

GCFC - Professional Staff Certification and Credentialing  
Requirements (fingerprinting requirements)

GDFA - Support Staff Qualifications and Requirements  
(fingerprinting 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.

I-6611

©

IJOC-R

REGULATION

REGULATION

## SCHOOL VOLUNTEERS

Volunteer selection shall be made based on the qualifications and availability of the volunteer.

Volunteers shall be assigned only to those teachers who have requested volunteer assistance. Staff should request volunteers through administrative channels for selected activities and as resource persons.

Assignment shall be made by the school administrator.

Volunteers shall be provided appropriate training at the building level consistent with their tasks and existing district standards. This training shall be developed under the leadership of the principal. Exceptions would be district-wide programs established by the administration whereby general volunteer programs would be defined.

Services of a volunteer may be terminated when circumstances in the judgment of the administration necessitate termination with or without prior notice..

### Duties and Responsibilities

Assignment shall be limited to assisting staff members with duties such as routine supervisory, tutorial, clerical, housekeeping and material preparation tasks.

Assignment shall be limited to situations which are supervised by a certificated staff person.

In some instances, volunteers may perform clerical and material preparation tasks away from the school site.

Volunteers with special talents, hobbies or experiences may share those with students on a scheduled basis in a suitable educational setting.

Volunteers will not discuss the performance or actions of students except with the student's teacher, counselor or principal.

*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**

Volunteers will refer to a regular staff member for final solution of any student problems which arise, whether of an instructional, medical or operational nature.

All volunteers will sign in and out at the assigned work site.

*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-6631

©

IJOC-E

EXHIBIT

EXHIBIT

## SCHOOL VOLUNTEERS

Regular volunteers shall not be allowed to begin their service until after they have received a copy of their job description, their duties are explained to them and they have accepted in writing the following volunteer pledge:

(1) it is my duty to deal justly and considerately with each student, school employee or other volunteer;

(2) it is my duty to share the responsibility for improving educational opportunities for all;

(3) it is my duty to stimulate students to think and learn, but at the same time protect them from harm;

(4) it is my duty to respect the confidentiality of student records and information about students, their personal or family life;

(5) it is my duty not to discriminate or to permit discrimination on the basis of race, color, national origin, ethnicity, sex, sexual orientation, disability, religion or serious medical condition against any person while I am on duty as a volunteer;

(6) it is my duty to avoid exploiting or unduly influencing a student into engaging in an illegal or immoral act or any other behavior that would subject the student to discipline for misconduct, whether or not the student actually engages in the behavior;

(7) it is my duty to avoid giving gifts to any one student unless all students similarly situated receive or are offered gifts of equal value for the same reason;

(8) it is my duty to avoid lending money to students;

(9) it is my duty to avoid having inappropriate contact with any student, whether or not on school property, which includes all forms of sexual touching, sexual relations or romantic relations, any touching which is unwelcome by the student or inappropriate given the age, sex and maturity of the student;

(10) it is my duty to avoid giving a ride to a student;

(11) it is my duty not to engage in sexual harassment of students, other volunteers or school employees;

(12) it is my duty not to engage in inappropriate displays of affection, even with consenting adults, while on school property or during school events off premises;

(13) it is my duty not to possess or use tobacco, alcohol or illegal drugs while on school property or during school events off premises;

*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**

(14) it is my duty to use educational facilities and property only for educational purposes or purposes for which they are intended consistent with applicable law, policies and rules;

(15) it is my duty to avoid any violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct when on school property or off campus at school functions;

(16) it is my duty to refrain from using school information technology equipment, hardware, software or internet access for other than a school related purpose;

(17) it is my duty to refrain from striking, assaulting or restraining students unless necessary in the defense of self or others;

(18) it is my duty to refrain from using inflammatory, derogatory or profane language while on school property or while attending school events off premises;

(19) it is my duty to refrain from bringing or possessing firearms or other weapons on school property except with proper authorization;

(20) it is my duty not to be under the influence of alcohol or illegal drugs on school property or at school events off premises; and

(21) it is my duty to report, as appropriate under the circumstances, violations of this pledge by other regular volunteers or school employees.

Volunteers are considered at-will employees and may be dismissed with or without cause at the discretion of the district by the administrator who assigns the volunteer to duties in the building or department or by the Superintendent.

---

Volunteer Signature

Date

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

**K-1650**

© 2011 New Mexico School Boards Association

**KF**

## **COMMUNITY USE OF SCHOOL FACILITIES**

### **Leasing (renting)**

The mission of the District is to provide comprehensive, success-oriented learning activities for young people in our schools.

These opportunities must be designed to develop the person's potential in the areas of academic ability and vocational awareness, cultural appreciation, physical well-being, social development, and community contribution.

School facilities and property may be leased to a group or organization for any lawful purpose in the interest of the community. The purposes include but are not limited to success-oriented activities, designed to develop a student's potential but may include other purposes such as:

- recreational,
- educational,
- political,
- economic,
- artistic,
- moral,
- scientific,
- social,
- religious,
- other civic,
- or governmental.

A reasonable use fee shall be charged for the lease of school facilities and property for all of those that meet the above criterion and this fee may be offset by goods contributed or services rendered by the lessee. "Reasonable use fee" means an amount that is at least equal to the cost for utilities, services, supplies or personnel provided to the lessee pursuant to the terms of the lease.

### **Uncompensated use**

The Superintendent may permit the uncompensated use of facilities and property by any school related group, including student political organizations, or by any organization whose membership is open to the public and whose activities promote the educational function of the District. "Education function" means uses that are directly related to the educational mission of the District as adopted 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.

*Policy Services*

**Page 2 of 2**

and includes the educational mission related uses of parent - teacher organizations, youth organizations and school employee organizations. Use of facilities or property by organizations indicated above that will require a substantial District cost for utilities, services, supplies and/or personnel may be permitted only if goods contributed, services rendered or payments are made to reimburse these costs to the District.

The mission statement found at the beginning of this policy and the group's or organization's promotion of the educational function through the activity, as interpreted by the Superintendent in good faith, will be the basis upon which uncompensated use of District facilities and property shall be approved or denied.

### **Generally**

The Superintendent shall recommend a fee schedule to the Board for the lease of school property and such schedule shall include a procedure for determining the value of goods and services being provided as compensation for the use of school property. The schedule shall include a designation of those groups whose activities promote the educational function of the School District as determined in good faith by the Superintendent and presented for Board review.

Property not associated with the use of facilities is covered in section E of the policy manual (see cross referenced policies below). The District will use it's best efforts to avoid conflicts with approved use of the facilities and property but no lease or use provision shall be effective if the administrator of the facility finds that it would cause delay, cancellation, or rescheduling of a school-sponsored activity.

The Superintendent shall establish such rules and regulations as are needed to implement this policy as well as to assure the preservation of District property.

Adopted: date of manual adoption

LEGAL REF.: 22-5-4 (D) NMSA (1978)  
6.50.17 NMAC

CROSS REF.: A - Educational Mission and Belief Statement

AC - Non - discrimination / Equal Opportunity

EDC - Authorized Use of School-Owned Materials and

Equipment

*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**

REGULATION

REGULATION

**COMMUNITY USE OF  
SCHOOL FACILITIES**

FILING PROCEDURES FOR USE OF  
EQUIPMENT/FACILITIES

A request is made at the campus on which the facility is located or the equipment is stored at least two (2) weeks before the requested use.

The principal of the campus involved shall review the submitted request form, checking to be certain that the applicant has filled in all of the necessary information and has signed and dated the form. The principal shall forward the request to the District Office. If approval is not recommended, the request shall be forwarded with an explanation.

If given approval by the District Office, costs and evidence of requirements are to be confirmed and the requests returned as indicated below.

- The request form is sent from the District office back to the principal once acted upon. The principal is responsible for notifying the applicant of the approval, conditions (if any) imposed or denial of approval and reason.
- If costs are involved, the principal asks the applicant to sign a form specifying the fees.

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



K-1681

© 2011 New Mexico School Boards Association KF-EA

EXHIBIT

EXHIBIT

**COMMUNITY USE OF  
SCHOOL FACILITIES**

**APPLICATION**

Application Date: \_\_\_\_\_ Organization  
Name("User"): \_\_\_\_\_

Commercial Group? \_\_\_\_\_ Street  
Address: \_\_\_\_\_

Zip: \_\_\_\_\_ City, State,

Date/Dates Requested: \_\_\_\_\_  
Reservation  
Contact

Person: \_\_\_\_\_  
Facility/Facilities Requested: \_\_\_\_\_

Number: \_\_\_\_\_  
\_\_\_\_\_ Phone

Person: \_\_\_\_\_ Event Contact  
Start Time: \_\_\_\_\_ [Person Responsible for Site Security during  
the Event.]

Number: \_\_\_\_\_ Cell Phone  
End Time: \_\_\_\_\_

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

Nature of Proposed

Use: \_\_\_\_\_

---

---

---

---

Location of Proposed Use: \_\_\_\_\_ but specifically limited to area outlined in Exhibit "A" attached.

Detailed description of types and number of animals to be involved in the event, **if any**, and in detail what is the event and the means of protecting and separating animals from users or spectators.

Expected Attendance: \_\_\_\_\_ Is Admission to be Charged? \_\_\_\_\_

A/V Equipment Requested? Yes \_\_\_\_\_ No \_\_\_\_\_

Will food be served? Yes \_\_\_\_\_ No \_\_\_\_\_

Is Set Up Time Required? Yes \_\_\_\_\_ No \_\_\_\_\_ If so, date & time requested for set up: \_\_\_\_\_

We agree to all provisions of the Site Use Agreement and the Exhibits hereto are incorporated herein by reference.

Signed \_\_\_\_\_

I hereby certify that I am authorized by user to make this Application and to make all representations on behalf of:

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

---

20\_\_

\_\_ day of \_\_,

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

**SITE USE AGREEMENT**

**1. General Conditions:** This Agreement is entered into between \_\_\_\_\_ (“School Facility”)

and \_\_\_\_\_ for the use of \_\_\_\_\_ (“User”) (Rooms or Areas to be Used)

between \_\_\_\_\_ and \_\_\_\_\_. The above named User and \_\_\_\_\_ (Time and Date) \_\_\_\_\_ (Time and Date)

School Facility agree, in consideration of the promises and representations made by user in the Application, all of which are deemed material and made by the user intending the School Facility to rely on each one and intending to be legally bound, to the Terms and Conditions set forth below. The School Facility does not guarantee the suitability of the facility or of the facility’s contents for the uses intended by the User. User agrees that in the event this Permit is canceled by User, or due to User’s failure to meet Agreement requirements, refunds of any fees paid by User will be at the discretion of the School Facility. Any change to this Site Use Agreement shall be made in writing at least five (5) business days prior to the date of the event and subject to approval by the School Facility.

**2. Lawful Use:** The use shall be conducted in compliance with all federal, state and municipal statutes, ordinances, rules and regulations including those with regard to discrimination. School facilities shall not be used for any unlawful purpose and in addition to the safety rules and policies specific to the School Facility, which are attached hereto (**if any**), the User shall not:

- (a) Allow litter or debris and shall keep the premises clean at all times.

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

- (b)** Allow use of alcohol, illegal drugs and tobacco which are prohibited on all school property at all times.
- (c)** Allow guns on school property except for those in the possession of duly certified law enforcement personnel.
- (d)** Use the facility without providing security as required by the school facility for the type of function they have planned.
- (e)** Allow use of swimming pool facilities without having a certified life guard on duty at all times.
- (f)** Allow events involving animals unless they are described in detail in the Application for Use and in compliance with any limitations or restrictions written into the Agreement. All animals must be leashed, penned, caged or otherwise properly contained, constrained or under supervision and control at all times. In the event of ambiguity of language in the Application or Agreement, restrictions on use of animals shall be strictly construed against the User.
- (g)** Allow open fires including candles, torches, and bonfires except pursuant to prior approval and permit by the school facility or other official having jurisdiction.
- (h)** Allow building exits to be blocked for any reason.
- (i)** Allow parking except in designated areas.
- (j)** Fail to provide vehicle and pedestrian traffic management sufficient to insure safe and orderly movement of vehicles and people.
- (k)** Allow design, placement or construction of booths, displays, viewing stands, platforms, theater sets, temporary stages or any other structures without adequate precautions for the safety of those building, using and disassembling such structures.
- (l)** Allow non-fire resistant decorations cover more than 20 percent of the wall area with decorations. Decorations shall never be placed within close proximity to incendiary sources.
- (m)** Create tripping hazards unless tripping hazards are unavoidable due to the nature of the event. Signage adequate to warn participants of obstacles must be provided.

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

(n) Allow hazardous materials, including pyrotechnic devices, fireworks, explosives flammable material or liquids, poisonous materials or plants, strong acids or caustics onto the premises or to be used in any way while occupying the premises except with the approval prior to use by the fire marshal or other authority having jurisdiction.

(o) Allow amusement rides or attractions, including but not limited to, trampolines of any type, enclosed or air supported structures of any type, climbing walls, climbing ropes, bow and arrow shooting activity or equipment or devices related thereto onto the premises or to be used in any way while occupying the premises except with the express permission of the school facility and on proof of insurance carried by the User written by a company acceptable to the New Mexico Public School Insurance Authority (“Authority”) of at least \$1,000,000 per occurrence naming the school facility as an additional insured. All such activities shall be operated and overseen by experienced, trained persons and, if possible, they must be certified to do so.

(p) Allow use of playground equipment unless at least one adult supervisor for every fifteen (15) children is in attendance.

(q) Use the school facility without appropriate signage to inform participants of the safety rules. A list of emergency agencies and phone numbers shall also be posted.

(r) Allow access to areas not specified for use in the Site Use Agreement.

(s) Allow access to any one to School Facilities without securing an Accident Waiver and Release or Liability Form.

**3. Notice of Accidents:** All users shall give written notice to the school facility of any accident resulting in bodily injury or property damage occurring on school facility premises or in any way connected with the use of the school facility premises within 24 hours of the accident. The notice shall include details of the time, place and circumstances of the accident and the names, addresses and phone numbers of any persons witnessing the accident.

**4. Damage to User’s Property:** The School Facility assumes no liability or responsibility for any personal property of the User or of its employees, agents, representatives, guests, volunteers or invitees brought onto the premises during the term of this Agreement.

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

**5. Parking and Security:** The School Facility may determine at its sole discretion whether the event requires additional parking arrangements or security staff. If such a determination is made by the School Facility, the User must arrange for and be responsible for payment of personnel or the other arrangements necessary to provide those additional parking and/or security requirements. User must provide proof within five (5) days prior to the event that the arrangements have been made and that User has guaranteed payment to those providing those additional services. During the event all motor vehicles of participants must be parked in accord with all posted and/or painted restrictions.

**6. Insurance:** General Liability insurance provided to the School Facility by the Authority shall be excess over any valid and collectible insurance carried by the User. General Liability insurance for the User provided to the School Facility by the Authority is limited to \$1,000,000 per occurrence. The User must carry Workers Compensation insurance if mandated under New Mexico law and Automobile Liability insurance naming the School Facility and its School Board, Board of Trustees or Governing Body as Additional Insureds, with limits no less than \$1,000,000 per occurrence for all motor vehicles owned or rented by User to be used in connection with the event. User shall deliver Certificates of Insurance along with a copy of the Additional Insured endorsement to the School Facility no later than 48 hours in advance of the facility use or this Site Use Agreement shall be cancelled.

**7. Use by Commercial Groups:** Commercial groups shall provide a copy of a current business license. Commercial groups shall inform participants in writing that the activity is not sponsored by the School Facility.

**8. Site Security:** The User must assure that activity participants and/or guests/spectators only access those site areas designated for the activity. The designated Event Contact Person shall verify that all the areas utilized were properly checked and secured upon departure from the School Facility's premises.

**9. Fees:** The attached schedule sets forth fees to be paid for use of the School Facility. In addition to the use fee, users may be required to reimburse the School Facility for special services such as setting up tables and chairs, use of school equipment such as projectors or video equipment or abnormal wear and tear on the premises, equipment and other school property. All fees shall be made by check or money order and shall be made payable to the School Facility. It is inappropriate to pay school employees directly for services in kind or in cash. The fees are payable to the School Facility with the Application.

**10. Clean Up:** Users of school facilities shall provide prompt and thorough clean-up and removal or storage of all special structures within no more than 24 hours after the end 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.

event, but in no case later than the beginning of the next school day or if school is out no later than prior to use of the area by school personnel. Users shall ensure that any furniture and equipment moved during the use of the facilities is replaced.

**11. Non-Assignability:** This agreement may not be assigned to another party without prior written consent of the School Facility, which consent may be withheld by the School Facility at its sole and absolute discretion.

**12. Choice of Law:** This agreement is to be governed and interpreted by the laws of State of New Mexico.

**13. Entire Understanding:** This agreement contains the entire understanding of the parties. There are no representations, covenants or warranties other than those expressly stated herein. No waiver or modification of any of the terms shall be valid unless in writing and signed by both parties.

**14. Statement of Information:** The undersigned, as a duly authorized representative of the User, states that to the best of his/her knowledge the School Facility, use of which is being applied for, will not be used for the commission of any crime or any act which is prohibited by law. By my signature below, I acknowledge that I am authorized to sign on behalf of the User and bind the User to the terms of this Agreement. I understand and agree to all terms, conditions and Rules in this Agreement.

**15. Release:** User accepts School Facility's' premises and adjoining areas as is and releases and discharges the School Facility, the Board of Trustees, School Board, or other Governing Body and each of their agents, employees and representatives from any and all liability, claims, judgments or demands, including reasonable attorneys fees and costs, which may arise from all injuries, deaths and damage to property arising directly or indirectly out of this Site Use Agreement including but not limited to User's use of the premises and the adjoining areas, including parking areas. Users, groups and their individual participants shall be required to give waivers of liability and releases for personal injury or property damage on the attached form. User understands that this Site Use Agreement can be cancelled and the event terminated if the User fails to comply with the above terms and conditions or if the User has misrepresented the nature or extent of the proposed use in any material way.

User's Authorized Representative's Signature: \_\_\_\_\_

Name of Representative:(Please Print)\_\_\_\_\_

Title:\_\_\_\_\_

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



Approved By: \_\_\_\_\_  
(Representative of School Facility)

Title: \_\_\_\_\_

Fee for Use: \_\_\_\_\_

Application-permit (NMPSIA) Rev. 7/2/10

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

**K-1683**

© 2011 New Mexico School Boards Association **KF-EB**

**EXHIBIT**

**EXHIBIT**

**COMMUNITY USE OF  
SCHOOL FACILITIES**

**SCHOOL FACILITIES USER FEES**

**Class I**      ***Fees***      No charge for District Mission related use.

<u>School-sponsored activities</u>	<u>Teacher Organizations</u>
<u>School Clubs</u>	<u>P.T.A. / Organizations</u>
<u>Boy Scouts</u>	<u>Booster clubs</u>
<u>Girl Scouts</u>	<u>Arizona Youth Soccer Organization</u>
<u>Little League Program</u>	

**Class II**      ***Fees***      See below

<u>Community college</u>	<u>Civic organizations</u>
<u>Community concerts</u>	<u>Educational organizations</u>
<u>Churches</u>	<u>Government organizations</u>
<u>Recitals</u>	<u>Service organizations</u>
<u>Cultural organizations</u>	<u>Extended day resource programs</u>

**Class III**      ***Fees***      See below

Commercial or profit-making organizations

<b>Facility</b>	<b>Class II</b>	<b>Class III</b>
<u>Classroom-Standard</u>	<u>\$X per hour</u>	<u>\$X per hour</u>
	<u>\$X added hours</u>	<u>\$X added hours</u>
<u>Computer lab/specialized classroom</u>	<u>\$X per hour</u>	<u>\$X per hour</u>
	<u>\$X added hours</u>	<u>\$X added hours</u>
<u>Auditorium</u>	<u>\$X per hour</u>	<u>\$X per hour</u>
	<u>\$X added hours</u>	<u>\$X added hours</u>

*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**

Gymnasium - Primary	\$X per hour	\$X per hour
	\$X added hours	\$X added hours
Gymnasium - Secondary	\$X per hour	\$X per hour
	\$X added hours	\$X added hours
Cafeteria and kitchen	\$X per hour	\$X per hour
	\$X added hours	\$X added hours
Cafeteria only	\$X per hour	\$X per hour
	\$X added hours	\$X added hours
Football stadium w/o lights	\$X per hour	\$X per hour
	\$X added hours	\$X added hours
with lights	\$X added hours	\$X added hours
Outdoor playfield w/o lights	\$X per hour	\$X per hour
	\$X added hours	\$X added hours
with lights	\$X added hours	\$X added hours

### **Goods and Services Contributed**

A person, group or organization may contribute goods or render services as full or partial payment of the user fee. The value of the goods will be determined by the District based upon established market price, trade in value, posted prices or where these methods prove impractical, appraisal or barter may be employed so long as the procedure is advantageous to the District. The value of services rendered shall be based upon the hourly wages of a beginning employee of this or another New Mexico School District performing similar functions as determined by the District. Should disagreement between the contributor and the District occur as to the value of the goods or services offered, the District reserves the right to refuse to accept the offer.

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

## STATUTES OR ADMINISTRATIVE CODE APPLICABLE TO THE POLICIES AND DISCUSSION

### **22-29-7. Authority; duties (LEGISYR=2003).**

In order to effectuate the purposes of the Public School Insurance Authority Act [22-29-1 NMSA 1978], the authority has the power to:

E. by rule, establish a policy to be followed by participating members relating to the use of volunteers. The policy shall be distributed to participating members and posted upon the authority's web site;

F. by rule, establish a policy to be followed by participating members relating to the use of school facilities by private persons, provided that the policy shall relate only to liability and risk issues and shall not affect the rights and responsibilities of local school boards to determine how, when and by whom school district facilities are used. The policy shall be distributed to participating members and posted upon the authority's web site;

G. insure, by negotiated policy, self-insurance or any combination thereof, participating members against claims of bodily injury, personal injury or property damage related to the use of school facilities by private persons; provided that the coverage shall be subject to the following conditions:

(1) no more than one million dollars (\$1,000,000) shall be paid for each occurrence; and

(2) the coverage shall only apply if the participating member was following the policy adopted by the authority pursuant to Subsection F of this section;

### **6.50.17.8. POLICY ON USE OF SCHOOL FACILITIES BY PRIVATE PERSONS**

A. The representative of the requesting group shall contact the facilities manager or other designated school official of the desired site regarding the proposed usage within a time frame required by the site manager or official. The school or school district shall provide the requesting group with a site use agreement which sets forth the terms and conditions of use of the premises. Site use agreements shall at minimum include a copy of the school's safety rules or safety rules provided by the authority's risk management provider. The requesting group shall agree to follow the safety rules included with the site use agreement and also agree to follow the liability and risk related rules contained in Subsection G of 6.50.17.8 NMAC prior to use of the school facilities. The school facility use shall be conducted in compliance with all federal, state and municipal statutes, ordinances, rules and regulations including those with regard to discrimination. School facilities shall not be used for any unlawful purpose.

*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. All groups shall also agree that the schools will not be liable for injury to the property of the group itself or participants in the group's activities resulting from their participation in the group's activities. Groups and their individual participants shall be required to give waivers of liability and releases for personal injury or property damage on forms provided by the school or the authority.

C. Liability insurance provided through the authority shall be excess over any valid and collectible insurance carried by any group permitted to use school facilities. Liability insurance provided by the authority for use of school facilities by private persons is limited to \$ 1,000,000 per occurrence. Schools or school districts shall not warrant the suitability of the facility or of the facility's contents for the uses intended by the requesting group.

D. Commercial groups shall provide a copy of a current business license. Commercial groups shall inform participants that the activity is not sponsored by the school whose facilities are being used.

E. All districts shall include within their site use agreement a statement clearly indicating that the approved activity sponsor must assure that activity participants and/or guests/spectators only access those site areas designated for the activity. District superintendents shall also designate in the site use agreement an individual who shall verify that all the areas utilized were properly checked and secured upon departure from the facility.

F. Schools and school districts shall make their own arrangements regarding any payments required for use of the facilities, for reimbursement for special services such as setting up tables and chairs, use of school equipment such as projectors or video equipment or abnormal wear and tear on the facilities. All fees shall be made by check or money order and shall be made payable to the school or school board. It is inappropriate for users of school facilities to pay school employees directly for services in kind or in cash.

G. In addition to the safety rules included in the site use agreement, any user of school or school district facilities must agree to the following liability and risk related rules.

(1) The use of alcohol, illegal drugs and tobacco are prohibited on all school property at all times.

(2) Guns are not permitted on school property except for those in the possession of authorized law enforcement personnel.

(3) Users of the facility shall be responsible for providing security as required by the member school or school district for the type of function they have planned.

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

(4) Users of swimming pool facilities must have a certified life guard on duty at all times.

(5) For events that involve animals, including dogs, all must be leashed, penned, caged or otherwise properly contained, constrained or under supervision and control at all times. Other animals or pets are prohibited.

(6) Open fires including candles, torches, and bonfires shall not be allowed except pursuant to prior approval and permit by the appropriate authorities.

(7) Building exits shall never be blocked for any reason.

(8) Parking shall be in designated areas only.

(9) Every effort shall be made to provide vehicle and pedestrian traffic management in order to insure safe and orderly movement of vehicles and people.

(10) All care shall be taken in the design, placement and construction of booths, displays, viewing stands, platforms, theater sets, temporary stages or any other structures to safeguard the safety of those building, using and disassembling such structures.

(11) Decorations shall be fire resistant whenever possible, cover no more than 20 percent of the wall area and never be placed within close proximity to incendiary sources.

(12) Care shall be taken at all times to avoid the creation of tripping hazards or if unavoidable to warn participants of obstacles.

(13) No hazardous materials, including pyrotechnic devises, fireworks, explosives flammable materials or liquids, poisonous materials or plants, strong acids or caustics shall be brought onto the premises or used in any way while occupying the premises except with the approval prior to use by the fire marshal or other authority having jurisdiction.

(14) No amusement rides or attractions, including but not limited to, trampolines of any type, enclosed or air supported structures of any type, climbing walls, climbing ropes, bow and arrow shooting activity or equipment or devises related thereto shall be brought onto the premises or used in any way while occupying the premises except with the express permission of school authorities and on proof of insurance by the user of the facility of at least \$ 1,000,000 per occurrence naming the school or school district and the authority as additional insureds. All such activities shall be operated and overseen by persons experienced and, if possible, certified to do so.

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

(15) All users of school facilities shall give written notice to the school of any accident resulting in bodily injury or property damage to property of the school occurring on school premises or in any way connected with the use of the school premises within 24 hours of the accident. The notice shall include details of the time, place and circumstances of the accident and the names and addresses and phone numbers of any persons witnessing the accident.

(16) If playground equipment is to be used, the user of the facility shall provide at least one adult supervisor for every fifteen (15) children.

(17) The user of the facility shall provide the appropriate signage to inform participants of the safety rules. A list of emergency agencies and phone numbers shall also be -posted.

(18) Access to school facilities by the users of the facility shall be limited to those areas specified in the site use agreement.

H. All users of school facilities shall agree to provide prompt and thorough clean-up and removal or storage of all special structures within no more than 24 hours after the end of the event, but in no case later than the beginning of the next school day or if school is out no later than prior to use of the area by school personnel. Users shall ensure that any furniture and equipment moved during the use of the facilities is replaced.

#### History

(6.50.17.8 NMAC - N, 7/1/2010 )  
03/11/2010

#### **6.50.18.8. POLICY FOR REGULAR VOLUNTEERS IN SCHOOLS AND SCHOOL DISTRICTS**

A. Participating member schools and school districts make extensive use of regular volunteers for many of their programs. In seeking and accepting the voluntary services of qualified, interested individuals, the participating members recognize that they have basic responsibilities to the regular volunteers as well as to the students and to themselves.

B. Each participating member shall be responsible for organizing and managing its own regular volunteer program subject to the following rules. Participating member schools, school districts and other educational entities shall have in place policies clearly establishing how and by whom regular volunteers are appointed and the policies at minimum shall require:

(1) interviewing all prospective regular volunteers and doing a background check including, but not limited to any history of drug abuse or drug dealing, domestic violence, DUI offenses, and sex crimes;

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

(2) providing all regular volunteers with a job description, outlining specific duties, time commitment and qualifications for acceptance as a regular volunteer;

(3) providing appropriate training, supervision and evaluation of regular volunteers; and

(4) instructing all regular volunteers to understand that failure to obey the code of ethics and standards of professional conduct as provided in 6.60.9.8 NMAC and 6.60.9.9 NMAC concerning the obligations of school personnel is grounds for dismissal.

C. Regular volunteers shall not be allowed to begin their service until after their duties are explained to them and they have accepted in writing the following volunteer pledge:

(1) it is my duty to deal justly and considerately with each student, school employee or other volunteer;

(2) it is my duty to share the responsibility for improving educational opportunities for all;

(3) it is my duty to stimulate students to think and learn, but at the same time protect them from harm;

(4) it is my duty to respect the confidentiality of student records and information about students, their personal or family life;

(5) it is my duty not to discriminate or to permit discrimination on the basis of race, color, national origin, ethnicity, sex, sexual orientation, disability, religion or serious medical condition against any person while I am on duty as a volunteer;

(6) it is my duty to avoid exploiting or unduly influencing a student into engaging in an illegal or immoral act or any other behavior that would subject the student to discipline for misconduct, whether or not the student actually engages in the behavior;

(7) it is my duty to avoid giving gifts to any one student unless all students similarly situated receive or are offered gifts of equal value for the same reason;

(8) it is my duty to avoid lending money to students;

(9) it is my duty to avoid having inappropriate contact with any student, whether or not on school property, which includes all forms of sexual touching, sexual

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



relations or romantic relations, any touching which is unwelcome by the student or inappropriate given the age, sex and maturity of the student;

(10) it is my duty to avoid giving a ride to a student;

(11) it is my duty not to engage in sexual harassment of students, other volunteers or school employees;

(12) it is my duty not to engage in inappropriate displays of affection, even with consenting adults, while on school property or during school events off premises;

(13) it is my duty not to possess or use tobacco, alcohol or illegal drugs while on school property or during school events off premises;

(14) it is my duty to use educational facilities and property only for educational purposes or purposes for which they are intended consistent with applicable law, policies and rules;

(15) it is my duty to avoid any violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct when on school property or off campus at school functions;

(16) it is my duty to refrain from using school information technology equipment, hardware, software or internet access for other than a school related purpose;

(17) it is my duty to refrain from striking, assaulting or restraining students unless necessary in the defense of self or others;

(18) it is my duty to refrain from using inflammatory, derogatory or profane language while on school property or while attending school events off premises;

(19) it is my duty to refrain from bringing or possessing firearms or other weapons on school property except with proper authorization;

(20) it is my duty not to be under the influence of alcohol or illegal drugs on school property or at school events off premises; and

(21) it is my duty to report, as appropriate under the circumstances, violations of this pledge by other regular volunteers or school employees.

D. For the mutual protection of regular volunteers and the participating members, personnel administering regular volunteer programs shall provide a safe place to work and clear project organization or direction, establish and inform regular volunteers of emergency procedures, ensure that regular volunteers understand

*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 their activities create participating member's liability, and that ethical standards apply to them as well as to regular school employees. Participating member personnel shall inform each regular volunteer in writing of the reserved right to dismiss unsatisfactory regular volunteers and of the established procedures for doing so.

E. Spontaneous volunteers are not subject to these rules, but spontaneous volunteers must be supervised at all times by an employee or regular volunteer of the school district, charter school or other educational entity.

History

(6.50.18.8 NMAC - N, 7/1/2010 )  
03/11/2010

# ***POLICY SERVICES***

## ***ADVISORY***

Volume 8, Number 2

February 2011

### **CONTENTS**

Policy Advisory No. 80 ----- IKACA —Parent Conferences

Policy Advisory No. 81 ----- IKE —Promotion and Retention of Students

#### **Policy advisory discussion**

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

**Introductory Comments.** This advisory, contains suggested policy changes to Parent Conferences as well as to Promotion and Retention of Students. It is based upon a change in statute that was overlooked at the time of legislative enactment (2007). The statute (22-2C-6 NMSA) directs the Board to adopt a remediation program and incorporate it into the District's education plan for student success. This may already have been accomplished in your education plan for student success since the requirement was in the 2003 version of the statute. You will find that the majority of the changes are word substitutions of "academically proficient" for the term "adequate yearly progress". The policies are interactive, with IKACA reflecting the time and content for informing parents about academic needs for success, and IKE explaining the steps to be taken for remediation or retention at grade levels through 7. These policies are intended to keep the District in compliance with statutory requirements.

***Policy Advisory No. 80.*** IKACA titled Parent Conferences is revised to indicate that the Parent Conference is being called to discuss academic progress and not adequate yearly progress (ayp) and must be called before a time certain. The policy also contains directions on what is to be shared with parents regarding deficiencies and remediation strategies as dictated by statute.

***Policy Advisory No. 81.*** IKE titled Promotion and Retention of Students is being revised to replace "adequate yearly progress" with "academic proficiency". Additionally, quotes from the statute (22-2C-6 NMSA) have been added which require Board action in adopting remediation programs to be added to the district's educational plan for student success. The results must be filed with the department. Each district may already be in compliance with the requirements to adopt remediation programs since that provision of the law was in effect in the 2003 version of the statute.

**A copy of the laws and regulations that may affect the policies as referenced in the above discussions can be found at the end of this advisory.**

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.

*Policy Services*

**Page 2 of 2**

I-6900

©

IKACA

## PARENT CONFERENCES

A parent shall be notified no later than the end of the second grading period that the parent's child is not academically proficient, and a conference consisting of the parent and the teacher shall be held to discuss possible remediation programs available to assist the student in becoming academically proficient. ~~their child is failing to make adequate yearly progress, and a conference consisting of the parent and the teacher shall be held to discuss possible remediation programs available to assist the student in attaining adequate yearly progress.~~ Specific academic deficiencies and remediation strategies shall be explained to the student's parent and a written intervention plan developed containing time lines, academic expectations and the measurements to be used to verify that a student has overcome academic deficiencies.

The Superintendent will establish procedures for such conferences. In addition to scheduled opportunities, parents shall have opportunities to arrange conferences with teachers at other times during the year.

*Adopted:* date of manual adoption

CROSS REF.: IKAB - Report Cards/Progress Reports  
IKE - Promotion and Retention of Students

LEGAL REF.: 22-2C-6 NMSA (1978)

*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**

^I-7200

©

IKE

## PROMOTION AND RETENTION OF STUDENTS

### Regular Education

The District is dedicated to the continuous development of each student.

The Board shall approve school-district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who do not demonstrate academic proficiency. The cost of remediation programs and academic improvement programs shall be borne by the school district. Remediation programs and academic improvement programs shall be incorporated into the school district's educational plan for student success and filed with the department.

Remediation programs and academic improvement programs include tutoring, extended day or week programs, summer programs and other research-based interventions and models for student improvement.

Diagnosis of weaknesses identified by a student's academic achievement may serve as criteria in assessing the need for remedial programs or retention.

### Grades One through Eight

At the end of grades one (1) through seven (7), three (3) options are available, dependent on a student's ~~adequate yearly progress~~ academic proficiency:

- The student ~~has made adequate yearly progress~~ is academically proficient and shall enter the next higher grade;
- The student ~~has not made adequate yearly progress~~ is not academically proficient and shall participate in the required level of remediation. Upon certification by the School District that the student ~~has made adequate yearly progress~~ is academically proficient, he shall enter the next higher grade; or
- The student ~~has not made adequate yearly progress upon~~ is not academically proficient after completion of the prescribed remediation program and upon the recommendation of the teacher and school principal shall either 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.

*Policy Services*

**Page 2 of 2**

- Retained in the same grade for no more than one (1) school year with an academic improvement plan developed by the student assistance team in order to ~~meet adequate yearly progress~~ become academically proficient, at which time the student shall enter the next higher grade; or
- Promoted to the next grade if the parent refuses to allow the child to be retained. In this case, the parent shall sign a waiver indicating a desire that the student be promoted to the next higher grade with an academic improvement plan designed to address specific academic deficiencies. The academic improvement plan shall be developed by the student assistance team outlining timelines and monitoring activities to ensure progress toward overcoming those academic deficiencies. Students failing to ~~make adequate yearly progress~~ become academically proficient at the end of that year as measured by grades, performance on school district assessments and other measures identified by the school district shall then be retained in the same grade for no more than one (1) year in order to have additional time to ~~master the required content standards~~ achieve academic proficiency.

At the end of the eighth (8th) grade, a student who ~~fails to make adequate yearly progress~~ is not academically proficient shall be retained in the eighth (8th) grade for no more than one (1) school year to ~~make adequate yearly progress~~ become academically proficient or if the student assistance team determines that retention of the student in the eighth (8th) grade will not assist the student ~~make adequate yearly progress~~ to become academically proficient, the team shall design a high school graduation plan to meet the student's needs for entry into the work force or a post-secondary educational institution. If a student is retained in the eighth (8th) grade, the student assistance team shall develop a specific academic improvement plan that clearly delineates the student's academic deficiencies and prescribes a specific remediation plan to address those academic deficiencies.

A student who ~~fails to make adequate yearly progress~~ does not demonstrate academic proficiency for two (2) successive school years shall be referred to the student assistance team for placement in an alternative program designed by the School District. Alternative program plans shall be filed with the department.

## **Grades Nine through Twelve**

The cost of summer and extended day remediation programs and academic improvement programs offered in grades nine through twelve shall be borne by the parent; however, where parents are determined to be indigent according to guidelines established by the department, the school district shall bear those 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.

## Special Education

Any student qualified as a special education eligible student who is unable to meet regular academic requirements for promotion must meet the requirements of an alternative curriculum derived from the regular curriculum, which will be developed by an individualized educational program (IEP) team on an individual basis. Students placed in special education will complete the course of study as prescribed in their individual promotion plans and implemented through their individual education programs. Course work will be presented at a level commensurate with the student's ability. The student's permanent file shall identify the courses completed through special education.

*Adopted:* date of manual adoption

CROSS REF.: IHBC-Programs for At-Risk/Disadvantaged  
IKAB - Report Cards/Progress Reports  
IKACA- Parent Conferences

LEGAL REF.: 22-2C-6 NMSA (1978)  
~~22-2-8.12 NMSA (1978)~~

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

## STATUTES OR ADMINISTRATIVE CODE APPLICABLE TO THE POLICIES AND DISCUSSION

### **22-2C-6. Remediation programs; promotion policies; restrictions (LEGISYR=2007).**

A. Remediation programs, academic improvement programs and promotion policies shall be aligned with school-district-determined assessment results and requirements of the state assessment and accountability program.

B. Local school boards shall approve school-district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who do not demonstrate academic proficiency. The cost of remediation programs and academic improvement programs shall be borne by the school district. Remediation programs and academic improvement programs shall be incorporated into the school district's educational plan for student success and filed with the department.

C. The cost of summer and extended day remediation programs and academic improvement programs offered in grades nine through twelve shall be borne by the parent; however, where parents are determined to be indigent according to guidelines established by the department, the school district shall bear those costs.

D. Diagnosis of weaknesses identified by a student's academic achievement may serve as criteria in assessing the need for remedial programs or retention.

E. A parent shall be notified no later than the end of the second grading period that the parent's child is not academically proficient, and a conference consisting of the parent and the teacher shall be held to discuss possible remediation programs available to assist the student in becoming academically proficient. Specific academic deficiencies and remediation strategies shall be explained to the student's parent and a written intervention plan developed containing time lines, academic expectations and the measurements to be used to verify that a student has overcome academic deficiencies. Remediation programs and academic improvement programs include tutoring, extended day or week programs, summer programs and other research-based interventions and models for student improvement.

*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. At the end of grades one through seven, three options are available, dependent on a student's academic proficiency:

(1) the student is academically proficient and shall enter the next higher grade;

(2) the student is not academically proficient and shall participate in the required level of remediation. Upon certification by the school district that the student is academically proficient, the student shall enter the next higher grade; or

(3) the student is not academically proficient after completion of the prescribed remediation program and upon the recommendation of the teacher and school principal shall either be:

(a) retained in the same grade for no more than one school year with an academic improvement plan developed by the student assistance team in order to become academically proficient, at which time the student shall enter the next higher grade; or

(b) promoted to the next grade if the parent refuses to allow the child to be retained pursuant to Subparagraph (a) of this paragraph. In this case, the parent shall sign a waiver indicating the parent's desire that the student be promoted to the next higher grade with an academic improvement plan designed to address specific academic deficiencies. The academic improvement plan shall be developed by the student assistance team outlining time lines and monitoring activities to ensure progress toward overcoming those academic deficiencies. Students failing to become academically proficient at the end of that year as measured by grades, performance on school district assessments and other measures identified by the school district shall be retained in the same grade for no more than one year in order to have additional time to achieve academic proficiency.

G. At the end of the eighth grade, a student who is not academically proficient shall be retained in the eighth grade for no more than one school year to become academically proficient or if the student assistance team determines that retention of the student in the eighth grade will not assist the student to become academically proficient, the team shall design a high school graduation plan to meet the student's needs for entry into the work force or a post-secondary educational institution. If a student is retained in the eighth grade, the student assistance team shall develop a

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

specific academic improvement plan that clearly delineates the student's academic deficiencies and prescribes a specific remediation plan to address those academic deficiencies.

H. A student who does not demonstrate academic proficiency for two successive school years shall be referred to the student assistance team for placement in an alternative program designed by the school district. Alternative program plans shall be filed with the department.

I. Promotion and retention decisions affecting a student enrolled in special education shall be made in accordance with the provisions of the individual educational plan established for that student.

J. For the purposes of this section:

(1) "academic improvement plan" means a written document developed by the student assistance team that describes the specific content standards required for a certain grade level that a student has not achieved and that prescribes specific remediation programs such as summer school, extended day or week school and tutoring;

(2) "school-district-determined assessment results" means the results obtained from student assessments developed or adopted by a local school board and conducted at an elementary grade level or middle school level;

(3) "educational plan for student success" means a student-centered tool developed to define the role of the academic improvement plan within the public school and the school district that addresses methods to improve student learning and success in school and that identifies specific measures of a student's progress; and

(4) "student assistance team" means a group consisting of a student's:

(a) teacher;

*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 is using this change to make further modifications in the open enrollment policy for clarification and explanation. THE OPEN ENROLLMENT POLICY CAN BE DIFFICULT TO FOLLOW AND TO IMPLEMENT DUE TO THE COMPLICATION OF THE IMPINGING LAWS AND RULES. Policy Services hopes that the information contained herein assists with this difficult task. Last in this set of advisories is the implementation of a legislative requirement that school districts prohibit corporal punishment, thus requiring a modification to a policy of the same name. Additionally two other documents in the policy manual must be modified to complete the changes needed to incorporate the prohibition of corporal punishment. These are JK-R and JK-EA both under Student Discipline.

**Policy Advisory No. 82.** IC titled School Year is being revised to reflect the requirement in 22-2-8.1 NMSA as amended, which excluded the number of days in the year and any penalties, in favor of listing the hours per day and number of hours in the year by instructional level required at a minimum each year.

**Policy Advisory No. 83.** JFB titled Open Enrollment is revised to allow children of parents in the United States armed forces or national guard who had to relocate to attend school where they were living prior to the relocation. This is a matter relegated to the highest priority. To do so the legislation considers them to be the same as those students' residing in the school district and within the attendance area of a public school. There are several issues based upon conflicting or superceding federal and state statutes and rules that must be considered. Policy Services has modified the original version of this policy to reflect these concerns, and will attempt to explain the modifications in the following text. Limitation on class size mandated by 22-10A-20 NMSA and Administrative Code 6.29.1.9G, authority of the Board to admit others under 22-12-5 NMSA, and the federal law regarding protected classes are among the concerns or issues that must be considered in these changes.

The first issue in open enrollment is the establishment of the capacity to admit additional students once the class size is determined. The students who are required to be admitted under the highest priority, which establishes the number of students per teacher, are:

- enrolled residents within the District and school boundaries;
- children of parents in the United States armed forces or national guard who had to relocate to attend school where they were living prior to the relocation and who will be enrolled;
- homeless pupils who were enrolled in the school as a school of origin and have requested enrollment (A "school of origin" means the school that 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.

attended when permanently housed, or the school in which the student was last enrolled.); and

- optionally, those children of certificated employees employed at the public school admitted on authority of the Board (In order to encourage qualified certificated employees to join the staff, children of certificated employees may be enrolled on Board authority if space is available per 22-12-5 NMSA.);

These factors are indicated in the side heading First Priority Placement and Excess Capacity in the policy. The excess capacity to enroll those in the second (2nd) through fourth (4th) priorities is determined by subtracting the first (1st) priority enrollment by class from the class size limits of 22-12-5 NMSA. The remaining capacity to enroll children in each class is excess capacity.

Another consideration in open enrollment is the possibility of discrimination against students of a protected class requesting enrollment, specifically, students who are special education qualified and are not residents. Federal law prohibits discrimination in relation to race, color, religion, sex, age, national origin, and *disability*. Keeping in mind that special education is not a grade but rather a circumstance requiring special instructional arrangements. Special education "classes" are not class groupings of students with similar abilities but rather are students placed with a teacher who has special training to meet the individual education program requirements that cannot be met by their regular classroom teacher. Federal law requires, in so far as is possible, all students with disabilities be placed in classes with regular education students. Each student with a disability should be admitted under open enrollment by grade level placement like any other student. To avoid the possibility of discrimination, first, ask no questions about disability until the student is admitted based upon the districts non discriminatory open enrollment policy.

In order to give all applicants an equal opportunity to enroll under open enrollment, establish an open enrollment period and announce it publicly so that all can be aware and apply during that period. The period selected for the policy is March 1 to April 30 for enrollment the next school year, but this period can be modified to meet local preferences. Selection for enrollment or placement on a waiting list should not be first come first served but should be such that all who apply have an equal statistical opportunity to be considered under the open enrollment plan. To do this, all who have applied during the open enrollment period, are to be placed into groupings by grade level and by priority level as established by law. They are to have their names placed in a drawing to be accepted or to be placed into a position on a waiting list. First to be drawn would be first to be accepted and so on by priority level and grade. If excess capacity for enrollment is available, the students would be admitted in order of their position on the list. To accommodate

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

those who were late in applying, their names would be placed on the list in the order that they were received after the names of those who applied during the proper period.

As a fail safe, if there are not sufficient applicants to meet the open or excess capacity of the school, the policy contains an exception paragraph. The selection list would not need to be applied and pupils could be admitted as they apply if there are not sufficient applicants during the open enrollment period to fill the excess capacity at any grade level.

One of the further considerations found in the statute establishing priority levels is that each district may establish enrollment preferences within the last two priority groupings, that is, students who previously attended and all other applicants, in that order. Those preferences are listed as additional considerations:

- after-school child care for students;
- child care for siblings of students attending the public school;
- children of non-certificated employees employed at the public school;
- extreme hardship;
- location of a student's previous school;
- siblings of students already attending the public school; and
- student safety.

The District may or may not accept these preferences, Policy Services has included all of the preferences listed to be analyzed upon an applicants request and used to advance the applicant over others who do not reflect the listed circumstances within the priority category and grade. The District may, of course, omit certain of these enrollment preferences but cannot add others since the law has established the limits.

One of the issues that may be seen as a new problem is that of attendance area nonresident transfers. These students who may have been enrolled the previous semester are not students residing within the school district and within the attendance area of a public school as defined in the statute for first priority enrollment. The statute places these student's in the third level priority, i.e., students who previously attended the school. The issue of attendance area nonresident transfers who have been enrolled in a school or district is handled by requiring that these students reapply yearly. With an application, special

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

circumstances as found in the preferences listed above, may be used to raise their position in the selection process, but they cannot by law, be accommodated if there is insufficient excess capacity declared to accept them. This is to protect the district from being required to add teachers and classes but it can cause problems for parents who wish to have their children continue in the school of choice. Each district may wish to discuss accommodating these students should excess capacity not be available at the time their preference category is considered.

In so far as admission standards are concerned, students admitted to the school are in the same circumstances as any other student once admitted. The only conditions under which a student can be disenrolled is for not meeting the requirements of the limited admission standards for discipline or entering a false statement on the application. Once a student is enrolled they are to be treated just as any other enrolled student in terms of due process and disciplinary action.

***Policy Advisory No. 84.*** JKA titled Corporal Punishment is being revised to reflect the requirement in NMSA 22-5-4.3B that "Corporal punishment shall be prohibited by each local school board and each governing body of a charter school." Note that if your district disallowed corporal punishment, JKA is to be replaced by the revision of JKA that now indicates the punishment is prohibited per the change in statute. If your district allowed corporal punishment, you will have to remove the copies of JKA and JKA-R, replace them with the new version and make corrections to regulation JK-R and JK-E or JK-EA as indicated in the attached examples following JKA below. For those Districts that have a list of disciplinary actions based upon conduct in their policy manual or in their student handbook, it will be necessary to check these lists and make appropriate changes, notifying Policy Services if the changes are within the Policy Manual.

***Future Advisories.*** There were several bills from the 2011 Legislative Session that were pocket vetoed and about eight (8) that by content require the Public Education Department to promulgate rules under the New Mexico Administrative Code that will need to receive public input before approval. Following this process, Policy Services will then consider the policy implications of these laws and any tangentially related bills to provide guidance to client districts.

A copy of the laws and regulations that may affect the policies as referenced in the above discussions can be found at the end of this advisory.

If you have any questions, call Policy Services at (505) 469-0193 and ask for Donn Williams, Policy Services Director or send an E-mail to [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.

I-0200

©

IC

## SCHOOL YEAR

(School Day)

~~The school year shall consist of at least one hundred eighty (180) full instructional days for a regular school year calendar and one hundred fifty (150) full instructional days for a variable school year calendar, exclusive of any release time for in-service training.~~

Each ~~i~~ Instructional day for regular students in school-directed programs shall consist of not less than the minimum amount of time prescribed in 22-2-8.1(BA) NMSA for each respective program level exclusive of lunch with the following exceptions:

- Home visits or parent-teacher conferences may be held for up to:
  - thirty-three (33) hours of the full day kindergarten program; and
  - twenty-two (22) hours of grades one (1) through six (6) programs.
- Consultation with parents to develop next step plans for students and for parent-teacher conferences may be held for up to twelve (12) hours of grades seven (7) through twelve (12) programs.

~~Whole or part days that are lost to weather, in-service training or other events shall be made up so students are given a full instructional year.~~

The Board shall establish the school calendar each year after recommendations from the Superintendent.

*Adopted:* date of manual adoption

LEGAL REF.: 22-2-8.1 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**



J-1050

©

JFB

## OPEN ENROLLMENT

The District has an open-enrollment program as set forth in 22-1-4 NMSA 1978.

### Definitions

~~Resident transfer pupil means a resident pupil who is enrolled in or seeking enrollment in a school that is within the school district but outside the attendance area of the pupil's residence.~~

~~Nonresident pupil means a pupil who resides in this state and who is seeking enrollment in a school district other than the school district in which the pupil resides.~~

### Enrollment Options

District resident pupils may enroll in another school district or in another school within this District. ~~Resident transfer pupils and nonresident p~~ Pupils may enroll in schools within this District, subject to the procedures that follow.

### Information and Application

The Superintendent shall prepare and distribute ~~a written information packet concerning~~ the District's application process, standards for acceptance or rejection, and policies, regulations, and procedures for open enrollment. The packet will be made available to everyone who requests it.

For non-Title I schools, notice provided to parents must incorporate the open enrollment provision that students from schools identified for improvement are considered to have higher priority when considering transfer requests. If funding from non-federal (state or local sources) is not available, parents should also be notified that funding of transportation is not possible.

Any eligible New Mexico resident may seek open enrollment by ~~The information packet shall include the~~ completing and submitting an enrollment application form, ~~and shall advise applicants that they may submit enrollment applications to~~ Applicants may be selected or receive early placement on the waiting list for enrollment if their applications are received between **March 1 and April 30** prior to the beginning of each school year. Those applications received ~~outside of~~ after these months this period will be added to a waiting list in the order that

*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**

they are received and may be considered following the placement of students already on waiting lists ~~in~~ by grade and enrollment preference categories. All school attendance area nonresident transfer pupils enrolled and pupils seeking enrollment must reapply yearly.

Transfers shall be made at the beginning of a semester. If an emergency arises or reasonable justification can be provided, the school principal will review a request for variance. In the event the principal negates the request, the matter may be presented to the Superintendent and ultimately to the Board for a decision. Transfer students will be expected to remain in the school of their choice until the close of the semester in which they are enrolled. Nothing in this open enrollment policy shall prevent the District from placing a pupil at any time in a school based upon the best interest of the student and school provided capacity is available.

### **First Priority Placement and Excess Capacity**

The Superintendent shall annually estimate how much excess capacity may exist to accept transfer pupils. The estimate of excess capacity shall be made for each school and grade level and shall take into consideration:

- District resident pupils in assigned school attendance areas.
- ~~The enrollment of eligible children of certificated employees. (In order to encourage qualified certificated employees to join the staff, children of certificated employees will be enrolled without payment of tuition per 22-12-5 NMSA.)~~
- ~~Resident transfer p~~ Pupils who were enrolled in the school the previous year and relocated because their ~~whose~~ parents were deployed as active duty members of the United States armed forces or national guard.
- Homeless pupils who were enrolled in the school as a school of origin (A school of origin means the school that the student attended when permanently housed or the school in which the student was last enrolled.)
- The enrollment of eligible children of certificated employees. (In order to encourage qualified certificated employees to join the staff, children of certificated employees will be enrolled ~~without payment of tuition~~ if space is available per 22-12-5 NMSA.)
- ~~Nonresident pupils who were enrolled in the school the previous year unless capacity is exceeded with their inclusion.~~

*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 estimate of excess capacity shall be made for each school and grade level and shall be based upon 22-10A-20 NMSA 1978 regarding teacher/student ratios with consideration for school growth factors.

The determination of excess capacity shall be made following ~~the determination~~ class size estimates of expected enrollment of those residents within each school attendance area, ~~resident transfer students enrolled the previous semester and those in the listed bullets found above homeless students.~~ The class size determination shall be made based upon student placement.

## **Enrollment Priorities**

If the Superintendent has determined that there is excess capacity to enroll additional pupils, such pupils shall be selected on the basis of designated priority categories by grade from the pool of pupils:

- Who have properly completed and submitted applications; and
- Who meet admission standards.

Enrollment priorities and procedures for selection shall be in the order and in accordance with the following:

- ~~E~~ Second (2nd) enrollment preference priority shall be given to ~~resident transfer~~ pupils who ~~reside within the school district and~~ request a transfer from a school ranked as a school that needs improvement or one subject to corrective action. If capacity is not sufficient to enroll all of these pupils, they shall be selected through a random selection process adopted by regulation of the Superintendent and placed in classes or on a waiting list in order of selection.
- ~~E~~ Third (3rd) enrollment preference priority shall be given to ~~nonresident pupils who were enrolled in the school the previous year~~ those who previously attended the public school. If capacity is not sufficient to enroll all of these pupils, they shall be selected through a random selection process adopted by regulation of the Superintendent and placed in classes or on a waiting list in order of selection.
- ~~E~~ Fourth (4th) enrollment preference priority shall be given to ~~resident transfer pupils who were not enrolled in the school the previous year~~ all other applicants. If capacity is not sufficient to enroll all of these pupils, they shall be selected through a random selection process adopted by regulation of the Superintendent and placed in classes or on a waiting list in order of selection.

*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 student who falls in enrollment priorities of previously attended the public school or any other applicant as found above may be given additional enrollment preference within that enrollment priority by the Superintendent upon request by the applicant and in consideration of each of the following circumstances subject to capacity available:
  - after-school child care for students;
  - child care for siblings of students attending the public school;
  - children of non-certificated employees employed at the public school;
  - extreme hardship;
  - location of a student's previous school;
  - siblings of students already attending the public school; and
  - student safety.
- ~~Enrollment preference shall be given to nonresident pupils who were not enrolled in the school the previous year. If capacity is not sufficient to enroll all of these pupils, they shall be selected through a random selection process adopted by regulation of the Superintendent.~~
- ~~Enrollment preference shall be given to out-of-state residents after all others and tuition shall be charged only if indicated by application of NMSA 22-12-5. If capacity is not sufficient to enroll all of these pupils, they shall be selected through a random selection process adopted by regulation of the Superintendent.~~

## Admission Standards

A student who has been expelled during the last twelve (12) months by any school district or private school in the United States or who ~~is not in compliance with a condition of disciplinary action based on~~ has exhibited behavior detrimental to the welfare or safety of other students or school employees ~~imposed by any in another school or school district in the United States within the last twelve (12) months~~ shall not be admitted. Acceptance for enrollment may be revoked or reenrollment denied upon finding the existence of any of these conditions.

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

## Notification

Notification shall be given prior to the beginning of the semester if possible for those selected on the basis of (1) the student's enrollment priority category by grade, and then (2) the order of the student's entry on the waiting list.

The District shall notify the emancipated pupil, parent, or legal guardian in writing whether the applicant has been accepted, placed on a waiting list pending the availability of capacity, or denied enrollment. If the applicant is placed on a waiting list, the notification shall inform the emancipated pupil, parent, or legal guardian of the time when it will be determined whether there is capacity for additional enrollment in a school. If the pupil's application is rejected, the reason for the rejection may be stated in the notification.

## Exception

Should there be excess capacity by grade level remaining for which no applications were submitted by the dates established for initial applications, the Superintendent shall authorize additional enrollment of pupils:

- Up to the determined capacity.
- On the basis of the order of the completed applications submitted after the notification date established in this policy.
- Without regard to enrollment preference.
- As long as admission standards are met.
- ~~Whose applications are submitted prior to the beginning of a semester.~~

## Hearing and Appeal Procedure for Denial of Enrollment

A student may appeal the denial of enrollment or reenrollment for attendance by requesting a hearing with the Superintendent of Schools within ten (10) days of receiving notification. Such hearing shall be on an informal basis, providing the student the opportunity to present factual information that would contradict the information leading to the denial. An electronic record shall be made of the hearing. Upon completion of the hearing the Superintendent shall render a decision in writing. The student may request that the decision of the Superintendent be reviewed by the Board within five (5) days of receipt 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.

Superintendent's decision. The Board shall receive the request and review the record to determine if the Superintendent's decision to deny enrollment was based upon reasonable information of expulsion or detrimental behavior as provided for in 22-1-4 NMSA 1978. A determination by the Board that the reasons were within statutory guidelines would affirm the Superintendent's decision, a determination to the contrary would allow the enrollment or reenrollment if the student based upon the priorities of this policy.

*Adopted:* date of manual adoption

LEGAL REF.: 22-1-4 NMSA (1978)  
22-10A-20 NMSA (1978)  
22-12-5 NMSA (1978)  
42 U.S.C. 11301, McKinney-Vento Homeless Assistance  
Act of 2001  
6.10.3.1 et. seq. NMAC  
6.42.2.8 NMAC.

CROSS REF.: EEAA - Walkers and Riders  
JF - Student Admissions  
JFAA - Admission of Resident Students  
JFAB - Admission of Nonresident Students  
JFABD - Admission of Homeless Students  
JG - Assignment of Students to Classes and Grade Levels

*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-1061

©

JFB-R

**REGULATION**

**REGULATION**

**OPEN ENROLLMENT**

**Selection Process**

All applicants will be accepted if there is sufficient capacity. If there is insufficient capacity, applicants will be selected from the submitted applications for enrollment in a school in accordance with a random selection process by enrollment priority and grade level except where policy may indicate otherwise. After June 1, pupils shall be selected for enrollment from the waiting list by enrollment priority in the order in which the pupils were placed on the waiting list through the random selection process, or as otherwise provided by policy.

**Procedure**

The procedure for selection shall be as follows:

- The applicants will be divided by priority categories and grade level, have their names placed on separate pieces of paper and the papers placed in a container. Names will be drawn by priority categories and numbered in the order in which they are drawn. All applications properly submitted will be drawn and numbered for enrollment consideration. The applicants whose names are selected in order, up to the capacity limitations established, shall be permitted to enroll in the school and grade level. All others drawn will be placed on a waiting list with priority in accord with the lowest number.

*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**

J-1081

©

JFB-E

**EXHIBIT**

**EXHIBIT**

**OPEN ENROLLMENT**

**ATTENDANCE APPLICATION**

**File this application at the School District office**

Student's name \_\_\_\_\_  
Last First M.I.

Current grade \_\_\_\_\_ Birth date \_\_\_\_\_ Home phone \_\_\_\_\_

Work phone \_\_\_\_\_ Message phone \_\_\_\_\_

Parent's name \_\_\_\_\_  
Last First M.I.

Home address \_\_\_\_\_  
Street

City Zip

*(P.O. Box is not acceptable as an address)*

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

- The above-named student:     resides outside the School District but within NM; *or*
- resides within the School District

**Present school of attendance**

School \_\_\_\_\_ District \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_

**Request assignment to \_\_\_\_\_ School**

Is the above-named student:

Yes     No Expelled or long-term suspended from any school or school district within the last twelve (12) months?

Yes     No Subject to expulsion or long-term suspension from a school or school district within the last twelve (12) months?

*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-4680**

©

**JKA**

**CORPORAL PUNISHMENT**

The \_\_\_\_\_ School District No. \_\_\_\_ ~~disallows~~ prohibits  
the use of corporal punishment.

*Adopted:* date of manual adoption

LEGAL REF.: 22-5-4.3 NMSA (1978)

CROSS REF.: JK - Student Discipline  
JKD - Student Suspension/Expulsion

*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-4611

©

JK-R

**REGULATION**

**REGULATION**

**STUDENT DISCIPLINE**

The following are prohibited activities:

- Criminal or delinquent acts;
- Gang related activity;
- Sexual harassment
- Disruptive conduct;
- Refusal to identify self; and
- Refusal to cooperate with school personnel.

A student may be subject to disciplinary action when the student engages in the above or those below:

- Engages in conduct that is disorderly, i.e., intentionally causing public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, by:
  - Fighting or engaging in violent behavior.
  - Making unreasonable noise.
  - Using abusive or obscene language or gestures.
  - Obstructing vehicular or pedestrian traffic.
  - Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.
- Engages in conduct that is insubordinate, i.e., failing to comply with the lawful directions of a teacher, school administrator, or other school employee in charge of the student.
- Endangers the safety, morals, health, or welfare of others by any act, including but not limited to:

*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**

- Selling, distributing, using, or possessing alcohol, drugs, or other controlled substances or drug paraphernalia.
- Selling, distributing, using, or possessing weapons, fireworks, or other dangerous instruments or contraband.
- Selling, using, or possessing obscene materials.
- Using profane, vulgar, or abusive language (including ethnic slurs).
- Gambling.
- Hazing.
- Engaging in lewd behavior.
- Engages in any of the following forms of academic misconduct:
  - Lateness for, missing, or leaving school or class without permission or excuse.
  - Cheating (including but not limited to copying, using unauthorized help sheets and the like, illegally obtaining tests in advance, substituting for a test-taker, and other forms of unauthorized collusion).
  - Plagiarism.
- Engages in conduct violative of the Board's rules and regulations for the maintenance of public order on school property.
- Has a record of excessive absenteeism.
- Is believed to have or actually has committed a crime.

Reasonableness of use of physical force in self-defense, defense of others, and defense of property will be considered as a mitigating factor in determining penalties for misconduct. The threat or use of physical force by a student is not reasonable (i) when made in response to verbal provocation alone, (ii) when assistance from a school staff member is a reasonable alternative, or (iii) when the degree of physical force used is disproportionate to the circumstances or exceeds that necessary to avoid injury to oneself or to others or to preserve property at risk.

## **Permissible Penalties**

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

The range of penalties that may be imposed for violations of student discipline rules include, but are not limited to, the following:

- Verbal warning.
- Written warning.
- Written notification to parents.
- Probation.
- Detention.
- ~~Corporal punishment.~~
- Suspension from transportation.
- Suspension from athletic participation.
- Suspension from social or extracurricular activities.
- Suspension of other privileges.
- Exclusion from a particular class.
- In-school suspension.
- Involuntary transfer.
- Community service.
- Suspension.
- Expulsion.

Depending upon the nature of the violation, student discipline may be progressive, i.e., generally, a student's first violation should merit a lighter penalty than subsequent violations. A District employee or agent should take into account all other relevant factors in determining an appropriate penalty. The above penalties may be imposed either alone or in combination.

### **Student Disciplinary Proceeding**

Any teacher, administrator, Board member, parent, or other person may report a violation of student disciplinary rules to an administrator. The administrator will

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

then make an investigation of the charges as deemed appropriate and will institute appropriate proceedings.

This information for the maintenance of public order on school property will be publicized and explained to all students and provided in writing to parents as requested. In order to promote effectiveness of student discipline, the assistance of parents in enforcing rules for student discipline shall be invited and encouraged.

### **Involving Staff Members**

The principal is responsible for involving staff members of the school in the development of a positive plan for student discipline. All staff members are responsible for implementing the plan of student discipline for the 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.

**EXHIBIT**

**EXHIBIT**

**STUDENT DISCIPLINE**

Each principal shall establish and retain complete records of student disciplinary actions and procedures. Records regarding student disciplinary actions shall be retained for at least two (2) years after last attendance date.

The accounting for students subject to disciplinary action on discipline record card shall contain an entry of:

- The full name of the student.
- The racial/ethnic and sex designations of the student.
- The time, place, and date of the offense or offenses, or observed behavior.
- Descriptions and dates of other offenses or observed behaviors if not previously reported.
- The names of witnesses or others involved.
- Specific measures taken by person or persons reporting the offense or offenses to effect an adjustment, including the specialized help secured before referral, such as conferences with parents, conferences with the principal, and conferences with other school personnel.
- The name and title of the person or persons reporting the offense or offenses.
- The alternatives, if any, that were considered prior to the imposition of the disciplinary action taken by the principal.
- The final disposition of the case.
- The name and title of the person or persons imposing the action or actions.

The kinds of disciplinary actions for which an accounting should be kept shall include, but not be limited to:

- Suspensions and/or expulsion.

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

- ~~Corporal punishment.~~
- Placement in detention (for disciplinary reasons).
- Transfer to another class (for disciplinary reasons).
- Transfer to another school (for disciplinary reasons).
- Referrals of cases to police and juvenile authorities.
- Others as required.

The school principal shall have the responsibility of maintaining the necessary discipline records to include:

- Discipline record card (each reported incident).
- Student discipline list (cumulative).
- ~~Log of corporal punishments (each incident).~~
- ~~Summary of corporal punishments: monthly report, retained by the principal; yearly summary, copy to the District office.~~
- Log of suspensions (cumulative).
- Summary of suspensions: monthly report, retained by the principal; yearly summary, copy to the District office.
- Log of expulsions and referrals to courts (cumulative).
- Log of Board expulsions (each incident).
- Summary of expulsions: monthly report, retained by the principal; yearly summary, copy to the District office.
- Log of student withdrawals (cumulative).
- Summary of withdrawals: monthly report, retained by the principal; yearly summary, copy to the District office.
- Log of dropouts (cumulative).

All monthly summary forms shall be completed at the close of each attendance month.

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



**STATUTES OR ADMINISTRATIVE CODE APPLICABLE TO THE  
POLICIES AND DISCUSSION**

**HB14**

AN ACT

RELATING TO PUBLIC SCHOOLS; ALLOWING ENROLLMENT PRIORITY TO STUDENTS WHOSE PARENTS ARE ACTIVE DUTY MILITARY PERSONNEL IN NEW MEXICO.

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

SECTION 1. Section 22-1-4 NMSA 1978 (being Laws 1975, Chapter 338, Section 1, as amended) is amended to read:

"22-1-4. FREE PUBLIC SCHOOLS-EXCEPTIONS-WITHDRAWING AND ENROLLING-OPEN ENROLLMENT.-

A. Except as provided by Section 24-5-2 NMSA 1978, a free public school education shall be available to any school-age person who is a resident of this state and has not received a high school diploma or its equivalent.

B. A free public school education in those courses already offered to persons pursuant to the provisions of Subsection A of this section shall be available to any person who is a resident of this state and has received a high school diploma or its equivalent if there is available space in such courses.

C. Any person entitled to a free public school education pursuant to the provisions of this section may enroll or re-enroll in a public school at any time and, unless required to attend school pursuant to the Compulsory School Attendance Law, may withdraw from a public school at any time.

D. In adopting and promulgating rules concerning the enrollment of students transferring from a home school or private school to the public schools, the local school board shall provide that the grade level at which the transferring student is placed is appropriate to the age of the student or to the student's score on a student achievement test administered according to the statewide assessment and accountability system.

E. A local school board shall adopt and promulgate rules governing enrollment and re-enrollment at public schools other than charter schools within the school district. These rules shall include:

- (1) definition of the school district boundary and the boundaries of attendance areas for each public school;
- (2) for each public school, definition of the boundaries of areas outside the school district boundary or within the school district but outside the public school's attendance area and within a distance of the public school that would not be served by a school bus route as determined pursuant to Section 22-16-4 NMSA 1978 if enrolled, which areas shall be designated as "walk zones";
- (3) priorities for enrollment of students as follows:
  - (a) first, students residing within 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**

school district and within the attendance area of a public school and students who had resided in the attendance area prior to a parent who is an active duty member of the armed forces of the United States or member of the national guard being deployed and whose deployment has required the student to relocate outside the attendance area for custodial care;

- (b) second, students enrolled in a school ranked as a school that needs improvement or a school subject to corrective action;
  - (c) third, students who previously attended the public school; and
  - (d) fourth, all other applicants;
- (4) establishment of maximum allowable class size if smaller than that permitted by law; and
- (5) rules pertaining to grounds for denial of enrollment or re-enrollment at schools within the school district and the school district's hearing and appeals process for such a denial. Grounds for denial of enrollment or reenrollment shall be limited to:

- (a) a student's expulsion from any school district or private school in this state or any other state during the preceding twelve months; or
- (b) a student's behavior in another school district or private school in this state or any other state during the preceding twelve months that is detrimental to the welfare or safety of other students or school employees.

F. In adopting and promulgating rules governing enrollment and re-enrollment at public schools other than charter schools within the school district, a local school board may establish additional enrollment preferences for rules admitting students in accordance with the third and fourth priorities of enrollment set forth in Subparagraphs © and (d) of Paragraph (3) of Subsection E of this section. The additional enrollment preferences may include:

- (1) after-school child care for students;
- (2) child care for siblings of students attending the public school;
- (3) children of employees employed at the public school;
- (4) extreme hardship;
- (5) location of a student's previous school;
- (6) siblings of students already attending the public school; and
- (7) student safety.

G. As long as the maximum allowable class size established by law or by rule of a local school board, whichever is lower, is not met or exceeded in a public school by enrollment of first- and second-priority persons, the public school shall enroll other persons applying in the priorities stated in the school district rules adopted pursuant to Subsections E and F of this section. If the maximum would be exceeded by enrollment of an applicant in the second through fourth priority, the public school shall establish a waiting list. As classroom space becomes available, persons highest on the waiting list within the highest priority on the list shall 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.

notified and given the opportunity to enroll."

## **SB145**

### **AN ACT**

**RELATING TO PUBLIC SCHOOLS; PROHIBITING CORPORAL PUNISHMENT AS A DISCIPLINARY SANCTION.**

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

**SECTION 1.** Section 22-5-4.3 NMSA 1978 (being Laws 1986, Chapter 33, Section 9, as amended) is amended to read:

**"22-5-4.3. SCHOOL DISCIPLINE POLICIES-STUDENTS MAY SELF-ADMINISTER CERTAIN MEDICATIONS.-**

A. Local school boards shall establish student discipline policies and shall file them with the department. The local school board shall involve parents, school personnel and students in the development of these policies, and public hearings shall be held during the formulation of these policies in the high school attendance areas within each school district or on a district-wide basis for those school districts that have no high school.

B. Each school district discipline policy shall establish rules of conduct governing areas of student and school activity, detail specific prohibited acts and activities and enumerate possible disciplinary sanctions, which sanctions may include in-school suspension, school service, suspension or expulsion. Corporal punishment shall be prohibited by each local school board and each governing body of a charter school.

C. An individual school within a school district may establish a school discipline policy, provided that parents, school personnel and students are involved in its development and a public hearing is held in the school prior to its adoption. If an individual school adopts a discipline policy in addition to the local school board's school district discipline policy, it shall submit its policy to the local school board for approval.

D. No school employee who in good faith reports any known or suspected violation of the school discipline policy or in good faith attempts to enforce the policy shall be held liable for any civil damages as a result of such report or of the employee's efforts to enforce any part of the policy.

E. All public school and school district discipline policies shall allow students to carry and selfadminister asthma medication and emergency anaphylaxis medication that has been legally prescribed to the student by a licensed health care provider under the following conditions:

- (1) the health care provider has instructed the student in the correct and responsible use of the medication;
- (2) the student has demonstrated to the health care provider and the school nurse or other school official the skill level necessary to use the medication and any device that is necessary to administer the medication as prescribed;
- (3) the health care provider formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by 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.

during school hours or school-sponsored activities, including transit to or from school or school-sponsored activities; and

(4) the student's parent has completed and submitted to the school any written documentation required by the school or the school district, including the treatment plan required in Paragraph (3) of this subsection and other documents related to liability.

F. The parent of a student who is allowed to carry and self-administer asthma medication and emergency anaphylaxis medication may provide the school with backup medication that shall be kept in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

G. Authorized school personnel who in good faith provide a person with backup medication as provided in this section shall not be held liable for civil damages as a result of providing the medication

## **SB145**

**AN ACT RELATING TO PUBLIC SCHOOLS; CLARIFYING THE SCHOOL YEAR AND LENGTH OF SCHOOL DAY.**

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

**SECTION 1.** Section 22-2-8.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 2, as amended) is amended to read:

**"22-2-8.1. SCHOOL YEAR--LENGTH OF SCHOOL DAY-MINIMUM.-**

A. Except as otherwise provided in this section, regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(1) kindergarten, for half-day programs, two and one-half hours per day or four hundred fifty hours per year or, for full-day programs, five and one-half hours per day or nine hundred ninety hours per year;

(2) grades one through six, five and one-half hours per day or nine hundred ninety hours per year; and

(3) grades seven through twelve, six hours per day or one thousand eighty hours per year.

B. Up to thirty-three hours of the full-day kindergarten program may be used for home visits by the teacher or for parent-teacher conferences. Up to twenty-two hours of grades one through six programs may be used for home visits by the teacher or for parent-teacher conferences. Up to twelve hours of grades seven through twelve programs may be used to consult with parents to develop next step plans for students and for parent-teacher conferences.

C. Nothing in this section precludes a local school board from setting a school year or the length of school days in excess of the minimum requirements established by Subsection A of this section.

D. The secretary may waive the minimum length of school days in those school districts where such minimums would create undue hardships as defined by the department as long as the school year is adjusted to ensure that students in those school districts receive the same total instructional time as other students in the state."

*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 8, Number 4

August 2011

## **CONTENTS**

Policy Advisory No. 85 ----- BCB—Board Member Conflict of Interest  
-----BCB-EA—Board Member Conflict of Interest  
-----BCB-EB—Board Member Conflict of Interest

Policy Advisory No. 86 -----DJ —Contracts for Purchases and Services

Policy Advisory No. 87 ----- DJE-E —Bidding/Purchasing Procedures

Policy Advisory No. 88 -----GBEAA—Staff Conflict of Interest  
----- GBEAA-EA—Staff Conflict of Interest  
----- GBEAA-EB—Staff Conflict of Interest

Policy Advisory No. 89 ----- GBP —Prohibited Personnel Practices

*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 advisory discussion

**Introductory Comments.** Policy Services indicated in a recent memo that the inclusion of School District officers and employees under the Governmental Conduct Act of Section 10-16-1 et seq. NMSA by the legislature in Senate Bill (SB) 432 would be a complicated policy update. It is also a very complicated and involved law which equally affects board members and employees of the school district. The law as found in SB 432, with the addition of school districts and personnel, is an incomplete version of the statutes included in the Governmental Conduct Act (GCA). There are at least six (6) sections of 10-16 NMSA that were not revised and which remain as a part of the GCA. Among these sections are penalties for violation of the GCA, an additional limitation on acceptance of honoraria and direction to the New Mexico Secretary of State regarding enforcement.

Essentially, the GCA applies to all Board members, administrative officers, teachers and other employees of the school district (a local government agency) as defined in 10-16-2 NMSA. It should be noted that many of the applicable parts of the GCA are repetitive of mandates in other Statutes related to finance and personnel issues.

There are twenty-four prohibitions within the GCA. The GCA calls for enforcement at the school district level by the Attorney General or County Attorney. It includes penalties of from \$250 for each offense up to \$5,000, and may include suspension, demotion and dismissal. It does not preclude criminal prosecution. The most important section of the statute to Board members, school officers and employees relative to penalties, however, is 10-16-13.1 NMSA which provides that the secretary of state is to seek first to ensure voluntary compliance with the provisions of the GCA before all other referrals. A person who violates the act unintentionally or for good cause shall be given ten days notice to correct the matter. More importantly, referrals by the secretary of state for civil enforcement of the act are to be pursued only after efforts by the secretary of state to secure voluntary compliance have failed. The law also mandates the secretary of state to advise and seek to educate all person required to perform duties under the GCA and to notify these persons at least annually of the act's ethical principals. These voluntary compliance conditions have no bearing on knowing and willful violations of the act.

Below, Policy Services has summarized and paraphrased the major parts of the GCA that make requirements of both public officers and employees. It is important that this summary list or a copy of the GCA be distributed to all public school officers and employees. Please be aware that at the time of the printing of this

*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**

advisory, the Compilation Commission had not yet integrated the new parts of the Governmental Conduct Act (GCA), and thus the full text is not yet available.

It is also important that each public officer or employee give proper notice to the school district if they or their family are employed by or have a substantial interest (greater than 20%) in a company or entity that may do business with the school district. Forms for Board members and employees can be found with the respective conflict of interest policies for both reporting the interest and making a public declaration of that interest. By making a public declaration of such interest after reporting it, the Board member or employee makes the entity in which they or their family have an interest eligible to do business with the district through a public procurement process.

In accordance with the Governmental Conduct Act a public officer or employee:

- will not, while participating directly or indirectly in a district contracting process, also be the employee of a contractor seeking that contract.
- shall treat any position with the district as a public trust and shall use the powers and resources of that position to advance the public interest and not to obtain personal benefits or pursue private interests.
- shall maintain, at all times, the integrity and ethically high responsibilities of public service and discharge all duties in the same manner.
- shall conduct all interactions in a manner that justifies the confidence placed in the office or position by the public.
- shall fully disclose real or potential conflicts of interest and shall make reasonable efforts to avoid undue influence and abuse of the office or position.
- shall not request or receive nor offer a legislator, public official, or public employee any money, thing of value, or promise thereof that is conditional upon or given in exchange for the promised performance of an official act.
- shall not directly or indirectly coerce or attempt to coerce another public officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for a political purpose.
- shall not directly or indirectly coerce or attempt to coerce an employee by threatening, requiring, influencing or advising the employee regarding any political activity.
- shall not violate the officer's or employee's duty not to use property of the district, or allow its use, for other than authorized purposes.

*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 take an official act for the primary purpose of directly enhancing a personal financial interest or position.
- shall be disqualified from engaging in any official act affecting a personal financial interest except if that interest is proportionately less than the benefit to the general public.
- shall not acquire a financial interest if it is believed the new interest will be directly affected by an official act.
- shall not use or disclose confidential information acquired by virtue of the office or position with the district for personal gain or another's private gain.
- will disclose any employment outside of the School District in writing to the district and will not participate in any decision or action involving the business identified in this disclosure, unless specifically permitted to do so by the Governmental Conduct Act.

#### *Contracts Involving Public Officers or Employees*

A district shall not enter into a contract with a public officer or employee, a family member or business in which the officer, employee or family member has a substantial interest (greater than 20 %) unless the public officer or employee has disclosed any interest through public notice and unless the contract is awarded pursuant to a competitive process.

A district shall not enter a contract with or take any action favorably affecting any person or business that is:

- represented in a contract of over one thousand dollars (\$1,000) by a former public officer or employee (within one year of separation) if the contract is a direct result of an official act of that officer or employee: or
- assisted in the transaction by a former public officer or employee as a direct result of an official act of that official or employee resulting in the agency's making the contract or taking the action

A former public officer or employee of the district shall not represent a person for pay before the district.

No bid or proposal shall be accepted from a person who directly participated in the preparation or specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based.

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



### *Business Sales Prohibited*

A public officer or employee shall not sell, coerce the sale of or be a party to a transaction for goods, services, construction or personal property directly or indirectly through a personal or family business in which a substantial interest is held to:

- an employee supervised by the public officer or employee. (If a supervised employee initiates the sale or the public officer or employee, in good faith, is not aware that the employee is under their supervision the prohibition does not apply.)
- a person over whom the public officer or employee has regulatory authority.

A public officer or employee shall not receive a commission or profit from a transaction for goods, services, construction or personal property directly or indirectly through a personal or family business in which a substantial interest is held to a person over whom the public officer or employee has regulatory authority.

A public officer or employee shall not accept an offer of employment or contract for goods, services, construction or personal property or other things of value from a person over whom the public officer or employee has regulatory authority.

### *Contributions Prohibited*

A business providing financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of the district who has authority over investment or bonds nor shall such a public officer or employee accept any contribution of value from such business. (This does not mean food or refreshment valued at less than one hundred dollars [\$100] consumed in a day.)

### *Honoraria Prohibited*

No public officer or employee may request or receive an honorarium (i.e., money or thing of value worth over \$100) for a speech or service rendered that relates to the performance of public duties. Reasonable reimbursement for meals, lodging or actual travel expenses are acceptable for making the speech or rendering the service.

**Policy Advisory No. 85.** BCB - Board Member Conflict of Interest has been revised to include those items in the GCA that are labeled as prohibited official acts, political acts and financial interests. Additionally, confidentiality and the requirement to identify any outside employment were added to this policy. Board Member Conflict

*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 Interest was selected as the proper code and policy name because most of the items from the GCA are related to the personal and family interests of public officers and employees meaning all Board members, administrative officers, teachers and other employees of the school district (a local government agency) as defined in 10-16-2 NMSA.

A minor revision was made in BCB-EA, the form for reporting a conflict of interest to the Board and public. This form can be reported publicly at the time of a board meeting when the conflict might arise or at anytime prior to the Board taking up a business item in which a Board member may have a conflict.

BCB-EB is a form for the Board member to disclose outside employments as required, per the Governmental Conduct Act (10-16-4.2 NMSA ).

***Policy Advisory No. 86.*** DJ —Contracts for Purchases and Services has been revised to include those items in the GCA that are related to contracts involving public officers and employees, their families or former public officers or employees. This policy applies equally to Board members and all employees.

***Policy Advisory No. 87.*** DJE-E —Bidding/Purchasing Procedures which contains a statement mandated for inclusion in each contract was revised by adding the limitation that "no bid or proposal shall be accepted from a person who directly participated in the preparation or specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based." This exhibit applies equally to Board members and all employees.

***Policy Advisory No. 88.*** GBEEA—Staff Conflict of Interest has been revised to include those items in the GCA that are labeled as prohibited official acts, political acts and financial interests of public officers and employees. It is essentially identical to the inclusions in BCB - Board Member Conflict of Interests, because the same criterion apply to non Board members who are administrative officers or employees with similar authority under the circumstances mentioned in the prohibitions of the GCA.

A minor revision was made in GBEEA-EA, the form for reporting a conflict of interest to the Board and public. This form can be reported publicly at the time of a board meeting when the conflict might arise or at anytime prior to the the district entering into a business agreement in which an employee or officer may have a conflict.

GBEEA-EB is a form for the officer or employee to disclose outside employment as required per the Governmental Conduct Act (10-16-4.2 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 Advisory No. 89.** GBP —Prohibited Personnel Practices is a new policy. It contains items in the GCA intended to prohibit business sales, commissions, offers of employment, contributions and honoraria to public officers and employees and their families. The prohibitions apply equally to Board members, administrators, teachers and other employees of the school district and their families.

### **Future Concerns and information.**

Many Policy Services Clients have manuals that were prepared four or more years ago. In the interim, several changes have taken place in statutes, administrative codes and cross references that have not been reflected in the advisories or alternatively, districts have not sent in adopted materials so that their manuals reflect up to date references. As suggested in your agreement with New Mexico School Boards Association Policy Services, a review of your manual should be undertaken within four to five years of adoption to make sure it is up to date and has all necessary policies and references. Recently it has been called to the Policy Services Director's attention that the Public Education Department replaced several New Mexico Administrative Code (NMAC) numbers with alternate numbers. 6.30 was replaced with 6.29 and not all of the sub numbers were consistent with the previous NMAC. There are at least seven (7) citations to 6.30 that will need to be changed. Policy Services will make changes as necessary and send out updates over time but those whose manuals are four years or older should schedule a review with the director of Policy Services. Information regarding the review costs and process will be sent out in the future with the updates and changes.

**A copy of the laws and regulations that may affect the policies as referenced in the above discussions can be found at the end of this advisory. Some parts of the Governmental Conduct Act (10-16-1 et seq. NMSA) were not included in the revisions of SB 432 and are not included in the attached. They can be obtained by reference to the 2010 NMSA 1978 statutes Section 10-16.**

If you have any questions, call Policy Services at (505) 469-0193 and ask for Donn Williams, Policy Services Director or send an E-mail to [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**

B-0800

©

BCB

## BOARD MEMBER CONFLICT OF INTEREST

### Participating and Voting Restriction

In the event a Board member is employed by a corporation or business or has a relative with a substantial interest in a corporation or business which is or may be interested in contracting with or furnishing goods and services to the District, the Board member shall declare the interest and refrain from debating and voting upon the question of doing business with the company. Once such interest is publicly disclosed the corporation or business can seek and obtain the business of the district through a public bidding process.

### Nepotism

A person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-law, sister, sister in law of a member of the Board may not be initially employed or approved for employment in any capacity in the District. Nothing in this section of this policy shall prohibit the continued employment of such a person employed on or before March 1, 2003.

### Prohibited Acts

In accordance with the Governmental Conduct Act a public officer or employee:

- will not, while participating directly or indirectly in a district contracting process, also be the employee of a contractor seeking that contract.
- shall treat any position with the district as a public trust and shall use the powers and resources of that position to advance the public interest and not to obtain personal benefits or pursue private interests.
- shall maintain, at all times, the integrity and ethically high responsibilities of public service and discharge all duties in the same manner.
- shall conduct all interactions in a manner that justifies the confidence placed in the office or position by the public.
- shall fully disclose real or potential conflicts of interest and shall make reasonable efforts to avoid undue influence and abuse of the office or position.

*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**

- shall not request or receive nor offer a legislator, public official, or public employee any money, thing of value, or promise thereof that is conditional upon or given in exchange for the promised performance of an official act.
- shall not directly or indirectly coerce or attempt to coerce another public officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for a political purpose.
- shall not directly or indirectly coerce or attempt to coerce an employee by threatening, requiring, influencing or advising the employee regarding any political activity.
- shall not violate the officer's or employee's duty not to use property of the district, or allow its use, for other than authorized purposes.
- shall not take an official act for the primary purpose of directly enhancing a personal financial interest or position.
- shall be disqualified from engaging in any official act affecting a personal financial interest except if that interest is proportionately less than the benefit to the general public.
- shall not acquire a financial interest if it is believed the new interest will be directly affected by an official act.
- shall not use or disclose confidential information acquired by virtue of the office or position with the district for personal gain or another's private gain.
- will disclose any employment outside of the School District in writing to the district and will not participate in any decision or action involving the business identified in this disclosure unless permitted to do so by the Governmental Conduct Act.

No person shall sell or use a student, faculty or staff list with personal identifying information obtained from the District for the purpose of direct marketing of goods or services except for legitimate educational purposes or with the authorized release of each individual on the list(s).

*Adopted:* date of manual adoption

LEGAL REF.: 10-16-1 et seq. NMSA  
22-5-6 NMSA  
6.10.6.8 NMAC

*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**

CROSS REF.: BBBA - Board Member Qualifications  
DJ - Contracts for Purchases and Services  
DJE - Bidding Purchasing Procedures  
GBEAA - Staff Conflict of Interest  
GBP - Prohibited Personnel Practices

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

B-0831

©

BCB-EA

**EXHIBIT**

**EXHIBIT**

**BOARD MEMBER CONFLICT  
OF INTEREST**

I, \_\_\_\_\_, do hereby indicate:

1. That I am presently an officer/employee of the \_\_\_\_\_ School District;
2. That I (or my relative[s]: \_\_\_\_\_) have a substantial interest in the contract, sale, purchase, or service to or decision by the \_\_\_\_\_ School Board as described below.
3. That I shall refrain from participating in any manner in my capacity as an employee or officer of the \_\_\_\_\_ School District in such contract, sale, purchase, service to, or decision by the Board unless specifically permitted to do so by law.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please identify and describe below any business in which you, or a family member (spouse, domestic partner, parent, sibling, and/or child), has/have a financial or substantial interest. Financial interest means an ownership interest in a business or any employment or prospective employment for which negotiations have already begun. Substantial interest means an ownership interest of a business that is greater than 20%.

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.

Type of Interest: Financial \_\_\_\_\_ Substantial \_\_\_\_\_

Interested Person: Myself \_\_\_\_\_ Family Member \_\_\_\_\_ (identify relationship)

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



B-0832

©

BCB-EB

**EXHIBIT**

**EXHIBIT**

**BOARD MEMBER CONFLICT  
OF INTEREST**

Board Member Disclosure of Ouside Employment/  
Governmental Conduct Act (10-16-4.2 NMSA)

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

Position: \_\_\_\_\_

Employer; date of hire; hours of work per week or other:

\_\_\_\_\_  
\_\_\_\_\_

Position and description of duties:

\_\_\_\_\_  
\_\_\_\_\_

Does employer contract with the \_\_\_\_\_ School District:

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes then a conflict of interest form stating the conflict must be completed and  
acknowledged at a public meeting.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

Date

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

D-2450

©

DJ

## CONTRACTS FOR PURCHASES AND SERVICES

All purchases from District funds shall be carried out in a manner most beneficial to the District and in accordance with applicable laws and regulations. The Superintendent shall designate a Purchasing Agent for the District who shall manage a central purchasing function pursuant to law, and promulgate District administrative procedures consistent with law and regulation. The procedures shall indicate requirements relative to bids, proposals and small purchases as they apply to the procurement of all materials, equipment and services. All procurements, other than emergency, that entail bids and proposals shall require Board review and approval prior to the award. Subsequent contract award amendments, which exceed ten percent (10%) of the original contract award, shall also be submitted to the Board for review and approval. Change orders on construction contracts do not require prior approval of the Board if the dollar amount does not exceed the provision for contingencies within the basic contract, or the contract as amended and approved by the Board. Change orders will, however, be reported to the Board at the next scheduled meeting.

### Contracts Involving Public Officers or Employees

A district shall not enter into a contract with a public officer or employee, a family member or business in which the officer, employee or family member has a substantial interest (greater than 20 %) unless the public officer or employee has disclosed any interest through public notice and unless the contract is awarded pursuant to a competitive process.

A district shall not enter a contract with or take any action favorably affecting any person or business that is:

- represented in a contract of over one thousand dollars (\$1,000) by a former public officer or employee (within one year) if the contract is a direct result of an official act of that officer or employee, or
- that is assisted in the transaction by a former public officer or employee as a direct result of an official act of that official or employee resulting in the agency's making the contract or taking the action.

A former public officer or employee of the district shall not represent a person for pay before the district.

*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**

*Adopted:* date of manual adoption

LEGAL REF.: 10-16-1 et seq. NMSA  
13-1-28 NMSA  
6.20.2.17 NMAC

CROSS REF.: BCB - Board Member Conflict of Interest  
BBBA - Board Member Qualifications  
DJE - Bidding Purchasing Procedures  
GBEAA - Staff Conflict of Interest  
GBP - Prohibited Personnel Practices

*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-2781

©

DJE-E

**EXHIBIT**

**EXHIBIT**

**BIDDING / PURCHASING PROCEDURES**

**(Note)**

No bid or proposal shall be accepted from a person who directly participated in the preparation or specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based.

All contracts and solicitations therefore shall contain reference to the criminal laws prohibiting bribes, gratuities and kickbacks.

LEGAL REF.: 10-16-7 NMSA  
10-16-13 NMSA  
13-1-191 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**

## STAFF CONFLICT OF INTEREST

### Nepotism

A person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter or daughter-in-law, brother, brother-in-law, sister, sister-in-law of a member of the Board or Superintendent may not be initially employed or approved for employment in any capacity in the District. The school board may waive the nepotism rule for family members of a local superintendent. Nothing in this section of this policy shall prohibit the continued employment of such a person employed on or before March 1, 2003.

### Prohibited Acts

In the event an officer or employee of the district is employed by a corporation or business or has a relative with a substantial interest in a corporation or business which is or may be interested in contracting with or furnishing goods and services to the District, the officer or employee shall declare the interest and refrain from being involved in the contracting process either directly or indirectly. Once such interest is publicly disclosed the corporation or business can seek and obtain the business of the district through a public bidding process.

In accordance with the Governmental Conduct Act a public officer or employee:

- will not, while participating directly or indirectly in a district contracting process, also be the employee of a contractor seeking that contract.
- shall treat any position with the district as a public trust and shall use the powers and resources of that position to advance the public interest and not to obtain personal benefits or pursue private interests.
- shall maintain, at all times, the integrity and ethically high responsibilities of public service and discharge all duties in the same manner.
- shall conduct all interactions in a manner that justifies the confidence placed in the office or position by the public.
- shall fully disclose real or potential conflicts of interest and shall make reasonable efforts to avoid undue influence and abuse of the office or position.

*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 request or receive nor offer a legislator, public official, or public employee any money, thing of value, or promise thereof that is conditional upon or given in exchange for the promised performance of an official act.
- shall not directly or indirectly coerce or attempt to coerce another public officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for a political purpose.
- shall not directly or indirectly coerce or attempt to coerce an employee by threatening, requiring, influencing or advising the employee regarding any political activity.
- shall not violate the officer's or employee's duty not to use property of the district, or allow its use, for other than authorized purposes .
- shall not take an official act for the primary purpose of directly enhancing a personal financial interest or position.
- shall be disqualified from engaging in any official act affecting a personal financial interest except if that interest is proportionately less than the benefit to the general public.
- shall not acquire a financial interest if it is believed the new interest will be directly affected by an official act.
- shall not use or disclose confidential information acquired by virtue of the office or position with the district for personal gain or another's private gain.
- will disclose any employment outside of the School District in writing to the district and will not participate in any decision or action involving the business identified in this disclosure, unless permitted to do so by the Governmental Conduct Act.

No person shall sell or use a student, faculty or staff list with personal identifying information obtained from the district for the purpose of direct marketing of goods or services except for legitimate educational purposes or with the authorized release of each individual on the list(s).

## **Vendor Relations**

No employee of the District will accept gifts from any person, group, or entity doing, or desiring to do, business with the District. The acceptance of any business-related gratuity is specifically prohibited, except for widely distributed, advertising items of nominal value.

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

This policy should not be construed to deem unacceptable inexpensive novelty advertising items of general distribution. Acceptance of business lunches and holiday gifts for general consumption are acceptable under this policy.

*Adopted:* date of manual adoption

LEGAL REF.: 10-16-1 et seq. NMSA  
22-5-6 NMSA  
6.10.6.8 NMAC

CROSS REF.: BCB - Board Member Conflict of Interest  
DJE - Bidding Purchasing Procedures  
GBP - Prohibited Personnel Practices

*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-0731

©

GBEAA-EA

**EXHIBIT**

**EXHIBIT**

**STAFF CONFLICT OF INTEREST**

I, \_\_\_\_\_, do hereby indicate:

1. That I am presently an officer/employee of the \_\_\_\_\_ School District;
2. That I (or my relative[s]: \_\_\_\_\_) have a substantial interest in the contract, sale, purchase, or service to or decision by the \_\_\_\_\_ School Board as described below.
3. That I shall refrain from participating in any manner in my capacity as an employee or officer of the \_\_\_\_\_ School District in such contract, sale, purchase, service to, or decision by the Board unless specifically permitted to do so by law.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please identify and describe below any business in which you, or a family member (spouse, domestic partner, parent, sibling, and/or child), has/have a financial or substantial interest. Financial interest means an ownership interest in a business or any employment or prospective employment for which negotiations have already begun. Substantial interest means an ownership interest of a business that is greater than 20%.

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.



Type of Interest: Financial \_\_\_\_\_ Substantial \_\_\_\_\_

Interested Person: Myself \_\_\_\_\_ Family Member \_\_\_\_\_ (identify relationship)

*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-0732

©

GBEAA-EB

**EXHIBIT**

**EXHIBIT**

**STAFF CONFLICT OF INTEREST**

Employee Disclosure of Outside Employment/  
Governmental Conduct Act (10-16-4.2 NMSA)

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Position: \_\_\_\_\_

School or Location of Duty Assignment: \_\_\_\_\_

I, \_\_\_\_\_, as an employee of the  
\_\_\_\_\_ School District, am required to make this disclosure of outside  
employment pursuant to the Governmental Conduct Act (NMSA 1978, § 10-16-4.2):

Employer; date of hire; hours of work per week or other:

\_\_\_\_\_  
\_\_\_\_\_

Position and description of duties:

\_\_\_\_\_  
\_\_\_\_\_

Does employer contract with \_\_\_\_\_ School District:

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes then a conflict of interest form stating the conflict must be completed and  
acknowledged at a public meeting.

\_\_\_\_\_  
Print Name

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

---

Signature  
Date

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

**^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 (3rd) 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 Whistleblower Act 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.

### **Business Sales Prohibited**

A public officer or employee shall not sell, coerce the sale of or be a party to a transaction for goods, services, contraction or personal property directly or indirectly through a personal or family business in which a substantial interest is held to:

- an employee supervised by the public officer or employee. (If a supervised employee initiates the sale or the public officer or employee, in good faith, is not aware that the employee is under their supervision the prohibition does not apply.)
- a person over whom the public officer or employee has regulatory authority.

A public officer or employee shall not receive a commission or profit from a transaction for goods, services, construction or personal property directly 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.

*Policy Services*

**Page 2 of 2**

indirectly through a personal or family business in which a substantial interest is held to a person over whom the public officer or employee has regulatory authority.

A public officer or employee shall not accept an offer of employment or contract for goods, services, construction or personal property or other things of value from a person over whom the public officer or employee has regulatory authority.

### **Contributions Prohibited**

A business providing financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of the district who has authority over investment or bonds nor shall such a public office or employee accept any contribution of value from such business (this does not mean food or refreshment valued at less than one hundred dollars (\$100) consumed in a day.)

### **Honoraria Prohibited**

No public officer or employee may request or receive an honorarium (money or thing of value worth over \$100) for a speech or service rendered that relates to the performance of public duties. Reasonable reimbursement for meals, lodging or actual travel expenses are acceptable for making the speech or rendering the service.

*Adopted:* date of manual adoption

LEGAL REF.: 10-16-13 NMSA  
10-16-13.3 NMSA

CROSS REF.: BCB - Board Member Conflict of Interest  
BBBA - Board Member Qualifications  
DJ - Contracts for Purchases and Services  
DJE - Bidding Purchasing Procedures  
GBEAA - Staff Conflict of Interest

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

**STATUTES OR ADMINISTRATIVE CODE APPLICABLE TO THE  
POLICIES AND DISCUSSION**

SB 432

AN ACT

RELATING TO ETHICS; EXTENDING PROVISIONS OF THE GOVERNMENTAL CONDUCT ACT TO INCLUDE PUBLIC OFFICERS AND EMPLOYEES OF POLITICAL SUBDIVISIONS OF THE STATE; EXPANDING THE DEFINITION OF "CONTRACT"; ALLOWING PUBLIC OFFICERS AND EMPLOYEES TO CONTRACT WITH THE AGENCY THAT EMPLOYS THEM; PROHIBITING CERTAIN ACTS BY PUBLIC OFFICERS AND EMPLOYEES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. A new section of the Governmental Conduct

Act is enacted to read:

"PROHIBITED EMPLOYMENT.--It is unlawful for a state agency employee or local government agency employee who is participating directly or indirectly in the contracting process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed."

SECTION 2. Section 10-16-2 NMSA 1978 (being Laws 1967, Chapter 306, Section 2, as amended) is amended to read:

"10-16-2. DEFINITIONS.--As used in the Governmental Conduct Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "confidential information" means information that by law or practice is not available to the public;

C. "contract" means an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state or local government agency for:

- (1) the rendition of services, including professional services;
- (2) the furnishing of any material, supplies or equipment;
- (3) the construction, alteration or repair of any public building or public work;
- (4) the acquisition, sale or lease of any land or building;

*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**

(5) a licensing arrangement;

(6) a loan or loan guarantee; or

(7) the purchase of financial securities or instruments;

D. "employment" means rendering of services for compensation in the form of salary as an employee;

E. "family" means an individual's spouse, parents, children or siblings, by consanguinity or affinity;

F. "financial interest" means an interest held by an individual or the individual's family that is:

(1) an ownership interest in business or property; or

(2) any employment or prospective employment for which negotiations have already begun;

G. "local government agency" means a political subdivision of the state or an agency of a political subdivision of the state;

H. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

I. "public officer or employee" means any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators;

J. "standards" means the conduct required by the Governmental Conduct Act;

K. "state agency" means any branch, agency, instrumentality or institution of the state; and

L. "substantial interest" means an ownership interest that is greater than twenty percent."

SECTION 3. Section 10-16-3 NMSA 1978 (being Laws 1993, Chapter 46, Section 28, as amended) is amended to read:

"10-16-3. ETHICAL PRINCIPLES OF PUBLIC SERVICE--CERTAIN OFFICIAL ACTS PROHIBITED--PENALTY.--

A. A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

B. Legislators and public officers and employees shall conduct themselves in a manner that justifies 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.

confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

SECTION 4. Section 10-16-3.1 NMSA 1978 (being Laws 2007, Chapter 362, Section 9) is amended to read:

"10-16-3.1. PROHIBITED POLITICAL ACTIVITIES.--A public officer or employee is prohibited from:

A. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;

B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities; or

C. violating the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes."

SECTION 5. Section 10-16-4 NMSA 1978 (being Laws 1967, Chapter 306, Section 4, as amended) is amended to read:

"10-16-4. OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST PROHIBITED--DISQUALIFICATION FROM OFFICIAL ACT--PROVIDING A PENALTY.--

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial

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



interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.

C. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act."

SECTION 6. Section 10-16-4.2 NMSA 1978 (being Laws 2007, Chapter 362, Section 10) is amended to read:

"10-16-4.2. DISCLOSURE OF OUTSIDE EMPLOYMENT.--A public officer or employee shall disclose in writing to the officer's or employee's respective office or employer all employment engaged in by the officer or employee other than the employment with or service to a state agency or local government agency."

SECTION 7. Section 10-16-6 NMSA 1978 (being Laws 1967, Chapter 306, Section 6, as amended) is amended to read:

"10-16-6. CONFIDENTIAL INFORMATION.--No legislator or public officer or employee shall use or disclose confidential information acquired by virtue of the legislator's or public officer's or employee's position with a state agency or local government agency for the legislator's, public officer's or employee's or another's private gain."

SECTION 8. Section 10-16-7 NMSA 1978 (being Laws 1967, Chapter 306, Section 7, as amended) is amended to read:

"10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR EMPLOYEES.--

A. A state agency shall not enter into a contract with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed through 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.

notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process; provided that this section does not apply to a contract of official employment with the state. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this section.

B. Unless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, a local government agency shall not enter into a contract with a public officer or employee of that local government agency, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest.

C. Subsection B of this section does not apply to a contract of official employment with a political subdivision. A person negotiating or executing a contract on behalf of a local government agency shall exercise due diligence to ensure compliance with the provisions of this section."

SECTION 9. Section 10-16-8 NMSA 1978 (being Laws 1967, Chapter 306, Section 8, as amended) is amended to read:

"10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT SERVICE.--

A. A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.

B. A former public officer or employee shall not represent a person in the person's dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a

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

public officer or employee.

C. A local government agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of that local government agency within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of that political subdivision of the state whose official act, while in employment with that political subdivision of the state, directly resulted in the agency's making that contract or taking that action.

D. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked."

SECTION 10. Section 10-16-13 NMSA 1978 (being Laws 1967, Chapter 306, Section 13, as amended) is amended to read:

"10-16-13. PROHIBITED BIDDING.--No state agency or local government agency shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section."

SECTION 11. Section 10-16-13.2 NMSA 1978 (being Laws 2007, Chapter 362, Section 8) is amended to read:

"10-16-13.2. CERTAIN BUSINESS SALES TO THE EMPLOYEES OF STATE AGENCIES AND LOCAL GOVERNMENT AGENCIES PROHIBITED.--

A. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell

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

goods, services, construction or items of tangible personal property to an employee supervised by the public officer or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.

B. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.

C. A public officer or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the public officer or employee has regulatory authority.

D. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority."

SECTION 12. Section 10-16-13.3 NMSA 1978 (being Laws 2007, Chapter 362, Section 11) is amended to read:

"10-16-13.3. PROHIBITED CONTRIBUTIONS--FINANCIAL SERVICE CONTRACTORS.--

A. A business that contracts with a state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of that state agency or local government agency who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state.

B. A public officer or employee of a state agency or local government agency that has authority over the investment of public money or issuance of bonds, the revenue

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

of which is used for public projects in the state, shall not knowingly accept a contribution of anything of value from a business that contracts with that state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects.

C. For the purposes of this section:

(1) "anything of value" means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars (\$100) consumed in a day; and

(2) "contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration."

SECTION 13. A new section of the Governmental Conduct Act is enacted to read:

"STATE AGENCY OR LOCAL GOVERNMENT AGENCY AUTHORITY.-- Nothing in the Governmental Conduct Act shall be construed to preclude a state agency or local government agency from adopting and publishing ordinances, rules or standards that are more stringent than those required by the Governmental Conduct Act."

SECTION 14. REPEAL.--Sections 3-10-4, 3-10-5 and 4-44-22 through 4-44-27 NMSA 1978 (being Laws 1977, Chapter 78, Section 1, Laws 1965, Chapter 300, Section 14-9-5 and Laws 1969, Chapter 244, Sections 1 through 6) are repealed.

SECTION 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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

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