

POLICY SERVICES

ADVISORY

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Policy advisory discussion

The following advisory and discussions regard recently released information from Federal regulatory bodies that specifically concern School Districts with elementary and secondary students. The section related to the e-rate contains mandatory requirements. The cell phone tax treatment is a change in direction affecting most schools that use cell phones for internal communications. Last is a list of potential violations of EPA regulations common to schools, presented as a reminder.

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

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Introductory Comments.

Policy Advisory No. 90. IJNDB —Use of Technology Resources in Instruction The Federal Communications Commission issued a final rule as a result of Protecting Children in the Twenty-first Century Act at 76 Fed. Reg 56.295 (Sept. 13, 2011) as follows:

"School districts that receive E-rate funds must adopt specific internet filtering and policy requirements per the Children's Internet Protection Act (CIPA). Among other things, this final rule adds language from the Protecting Children in the 21st Century Act to the existing Federal Communications Commission (FCC) rules implementing CIPA regarding school districts adding language to their internet safety policies about educating students about appropriate online behavior. Specifically, the final rule contained in this order implements the statutory language verbatim: "This Internet safety policy must also include monitoring the online activities of minors and must provide for educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response." Although a school's Internet safety policy may include the development and use of educational materials, the policy itself does not have to include such materials. The FCC has declined to define "social networking" or "cyberbullying." This new requirement is effective on July 1, 2012."

Accordingly, Policy Services provides the following advisory concerning the policy, regulation and exhibit concerning IJNDB on Use of Resources in Instruction - Modifications to the model policy were made to incorporate the requirements of the changes from the Federal Regulations. The policy now contains language indicating that ***the district will provide for educating minors about appropriate on line behavior including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.*** The model as modified does not include educational materials or programs to accomplish the requirements of the new regulations. As indicated in the announcement of the rule "the policy itself does not have to include such materials." The school district is required as a condition of receiving e-rate funding to provide education as indicated above. Policy Services suggests that the schools use Internet resources such as OnGuardOnline.gov or the Media Awareness Network at media-awareness.ca to begin this process of developing an education program to train students in online behavior and about the use of social networking, chatrooms and how to respond to cyberbullying. The educational program could be incorporated into an already established health, library, or other training programs or could stand alone. It should be a program approved by the Board, in which the local Board should make the decision as to what constitutes material that may be

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harmful to minors and prohibited in the course of monitoring access to on line content by minors and adults when using school equipment.

As the requirement indicated above is effective July 1, 2012, this advisory is sent in a timely manner to encourage each district to do the research and planning for implementation.

Policy Advisory No. 91. IRS issues Guidance on Tax Treatment of cell phones; Provides Small Business Recordkeeping Relief.

"Internal Revenue Service (IRS) Notice 2011-72 addresses the tax treatment of employer-provided cell phones. It states that when an employer provides an employee with a cell phone primarily for non-compensatory business reasons, the business and personal use of the cell phone is generally nontaxable to the employee. The business use is nontaxable as a working condition fringe benefit[s] and the personal use is nontaxable as a de minimis fringe benefit. The IRS will not require recordkeeping of business use in order to receive this tax-free treatment. In a memorandum to field examination operations, the IRS announced a similar approach to cash allowances and reimbursements for work-related use of personally-owned cell phones. Under this approach, employers that require employees, primarily for non-compensatory business reasons, to use their personal cell phones for business purposes may treat reimbursements of the employees' expenses for reasonable cell phone coverage as nontaxable. This treatment does not apply to reimbursements of unusual or excessive expenses or to reimbursements made as a substitute for a portion of the employee's regular wages. Neither guidance applies to the provision of cell phones or reimbursement for cell phone use that is not primarily business related; such arrangements are generally taxable."

It is the position of Policy Services that since the IRS will not require recordkeeping for business use of employer provided cell phones and will treat reimbursement for work-related use of personally-owned cell phones as nontaxable, a school board policy is not necessary regarding this issue. The determination by the Board regarding furnishing a cell phone or compensating for use of a personal cell phone should be a part of the compensation plan for an employee. The IRS has made the determination that burdensome recordkeeping is no longer required so long as the reimbursement or use are reasonable for the business, and personal use is minimal.

Policy Advisory No. 92. "The Environmental Protection Agency (EPA) has developed a list of potential violations of federal EPA regulations to remind K-12 schools of several of their key environmental requirements. The document lists eight federal environmental statutes that school districts must comply with. It also lists typical violations concerning the following topics: asbestos, Chlorofluorocarbon (CFC), combustion source, hazardous waste, oil storage tank, underground injection control, pesticide, and Polychlorinated Biphenyls (PCBs)."

Policy Services is providing this list as a reminder to K-12 schools in NM of their possible legal obligations regarding reporting in this area and to provide assistance in locating the sources for reporting.

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].

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IJNDB

USE OF TECHNOLOGY RESOURCES IN INSTRUCTION

Appropriate Use of Electronic Information Services

The District may provide electronic information services (EIS) to qualified students, teachers, and other personnel who attend or who are employed by the District. Electronic information services include networks (e.g., LAN, WAN, Internet), databases, and any computer-accessible source of information, whether from hard drives, tapes, compact disks (CDs), floppy disks, flash drives, memory cards or other electronic sources. The use of the services shall be in support of education, research, and the educational goals of the District. To assure that the EIS is used in an appropriate manner and for the educational purposes intended, the District will require anyone who uses the EIS to receive instruction in and follow its guidelines and procedures for appropriate use. Instruction in appropriate online behavior shall include how to interact with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response. Anyone who misuses, abuses, or chooses not to follow the EIS guidelines and procedures will be denied access to the District's EIS and may be subject to disciplinary action.

Each user will be required to sign an EIS user's agreement. The District may log the use of all systems and monitor all system utilization. Accounts may be closed and files may be deleted at any time. The District is not responsible for any service interruptions, changes, or consequences. The District reserves the right to establish rules and regulations as necessary for the efficient operation of the electronic information services.

The District does not assume liability for information retrieved via EIS, nor does it assume any liability for any information lost, damaged, or unavailable due to technical or other difficulties.

Web and Internet Publishing

Documents created for the Web must have a purpose that falls within at least one of the following two categories: (1) Support of curriculum, instruction, and learning, and (2) Communication with parents and the community.

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All information must accurately reflect the mission, goals, policies, program, and activities of the School District. All subject matter should relate to curriculum, instruction, and general information that is appropriate, or it should relate to activities of the District or the schools within the District.

Filtering and Internet Safety

The District shall provide for technology protection measures that protect against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by students, harmful to students. The protective measures shall also include monitoring the online activities of students.

Limits, controls, and prohibitions shall be placed on student:

- Access to inappropriate matter.
- Safety and security in direct electronic communications.
- Unauthorized online access or activities.
- Unauthorized disclosure, use and dissemination of personal information.

The Superintendent is responsible for establishing and enforcing the District's electronic information services guidelines and procedures for appropriate technology protection measures (filters), monitoring, and use.

Adopted: date of manual adoption

LEGAL REF.: 20 U.S.C. 9134, The Children's Internet Protection Act
47 U.S.C. 254, Communications Act of 1934 (The Children's
Internet Protection Act)

CROSS REF.: EGD - Use of Technology in Office Services

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REGULATION

REGULATION

**USE OF TECHNOLOGY RESOURCES
IN INSTRUCTION**

**(Safety and use of Electronic
Information Services)**

Use of the electronic information services (EIS) requires that the use of the resources be in accordance with the following guidelines and support the education, research, and educational goals of the District. Filtering, monitoring, and access controls shall be established to:

- Limit access by minors to inappropriate matter on the Internet and World Wide Web.
- Monitor the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications.
- Monitor for unauthorized access, including so-called "hacking," and other unlawful activities by minors online.
- Restrict access by minors to materials harmful to minors.

Content Filtering

A content filtering program or similar technology shall be used on the networked electronic information system (EIS) as well as on standalone computers capable of District authorized access to the Internet. The technology shall at a minimum limit access to obscene, profane, sexually oriented, harmful, or illegal materials. Should a District adult employee have a legitimate need to obtain information from an access-limited site, the Superintendent may authorize, on a limited basis, access for the necessary purpose specified by the employee's request to be granted access.

Monitoring

As a means of providing safety and security in direct electronic communications and to prevent abuses to the appropriate use of electronic equipment, all computer access to the Internet through the District electronic information systems (EIS) or standalone connection shall be monitored periodically or randomly through in-use monitoring or review of usage logs.

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Access Control

Individual access to the EIS shall be by authorization only. Designated personnel may provide authorization to students and staff who have completed and returned an electronic information services user agreement. The Superintendent may give authorization to other persons to use the EIS.

Acceptable Use

Each user of the EIS shall:

- Receive instruction about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.
- Use the EIS to support personal educational objectives consistent with the educational goals and objectives of the School District.
- Agree not to submit, publish, display, or retrieve any defamatory, inaccurate, abusive, obscene, profane, sexually oriented, threatening, racially offensive, or illegal material.
- Abide by all copyright and trademark laws and regulations.
- Not reveal home addresses, personal phone numbers or personally identifiable data unless authorized to do so by designated school authorities.
- Understand that electronic mail or direct electronic communication is not private and may be read and monitored by school employed persons.
- Not use the network in any way that would disrupt the use of the network by others.
- Not use the EIS for commercial purposes.
- Follow the District's code of conduct.
- Not attempt to harm, modify, add, or destroy software or hardware nor interfere with system security.
- Understand that inappropriate use may result in cancellation of permission to use the educational information services (EIS) and appropriate disciplinary action up to and including expulsion for students.

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In addition, acceptable use for District employees is extended to include requirements to:

- Maintain supervision of students using the EIS.
- Agree to directly log on and supervise the account activity when allowing others to use District accounts.
- Take responsibility for assigned personal and District accounts, including password protection.
- Take all responsible precautions, including password maintenance and file and directory protection measures, to prevent the use of personal and District accounts and files by unauthorized persons.

Each user will be required to sign an EIS user agreement. A user who violates the provisions of the agreement will be denied access to the information services and may be subject to disciplinary action. Accounts may be closed and files may be deleted at any time. The District is not responsible for any service interruptions, changes, or consequences.

Details of the user agreement shall be discussed with each potential user of the electronic information services. When the signed agreement is returned to the school, the user may be permitted use of EIS resources through school equipment.

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**USE OF TECHNOLOGY RESOURCES
IN INSTRUCTION**

**ELECTRONIC INFORMATION SERVICES
USER AGREEMENT**

Details of the user agreement shall be discussed with each potential user of the electronic information services (EIS). When the signed agreement is returned to the school, the user may be permitted use of EIS resources.

Terms and Conditions

Acceptable use. Each user must:

- Use the EIS to support personal educational objectives consistent with the educational goals and objectives of the School District.
- Agree not to submit, publish, display, or retrieve any defamatory, inaccurate, abusive, obscene, profane, sexually oriented, threatening, racially offensive, or illegal material.
- Abide by all copyright and trademark laws and regulations.
- Not reveal home addresses, personal phone numbers or personally identifiable data unless authorized to do so by designated school authorities.
- Understand that electronic mail or direct electronic communication is not private and may be read and monitored by school employed persons.
- Not use the network in any way that would disrupt the use of the network by others.
- Not use the EIS for commercial purposes.
- Follow the District's code of conduct.

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- Not attempt to harm, modify, add/or destroy software or hardware nor interfere with system security.
- Understand that inappropriate use may result in cancellation of permission to use the educational information services (EIS) and appropriate disciplinary action up to and including expulsion for students.

In addition, acceptable use for District employees is extended to include requirements to:

- Maintain supervision of students using the EIS.
- Agree to directly log on and supervise the account activity when allowing others to use District accounts.
- Take responsibility for assigned personal and District accounts, including password protection.
- Take all responsible precautions, including password maintenance and file and directory protection measures, to prevent the use of personal and District accounts and files by unauthorized persons.

Personal responsibility. I will report any misuse of the EIS to the administration or system administrator, as is appropriate.

I understand that many services and products are available for a fee and *acknowledge my personal responsibility for any expenses incurred without District authorization.*

Network etiquette. I am expected to abide by the generally acceptable rules of network etiquette. Therefore, I will:

- *Be polite and use appropriate language.* I will not send, or encourage others to send, abusive messages.
- *Respect privacy.* I will not reveal any home addresses or personal phone numbers or personally identifiable information.
- *Avoid disruptions.* I will not use the network in any way that would disrupt use of the systems by others.
- *Observe the following considerations:*

- Be brief.

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- Strive to use correct spelling and make messages easy to understand.
- Use short and descriptive titles for articles.
- Post only to known groups or persons.

Services.

The School District specifically denies any responsibility for the accuracy of information. While the District will make an effort to ensure access to proper materials, the user has the ultimate responsibility for how the electronic information service (EIS) is used and bears the risk of reliance on the information obtained.

By signing this agreement I acknowledge receiving training in appropriate on line behavior and agree to abide by the School District policy and regulations on appropriate use of the electronic information system, as incorporated herein by reference.

I understand and will abide by the provisions and conditions indicated. I understand that any violations of the above terms and conditions may result in disciplinary action and the revocation of my use of information services.

Name _____

Signature _____ Date _____
(Student or employee)

School _____ Grade (if a student) _____

Note that this agreement applies to both students and employees.

The user agreement of a student who is a minor must also have the signature of a parent or guardian who has read and will uphold this agreement.

Parent or Guardian Cosigner

As the parent or guardian of the above named student, I have read this agreement and understand it. I understand that it is impossible for the School District to restrict access to all controversial materials, and I will not hold the District responsible for materials acquired by use of the electronic information services (EIS). I also agree to report any misuse of the EIS to a School District administrator. (Misuse may come in many forms but can be viewed as any messages sent or received that indicate or suggest pornography, unethical or illegal

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solicitation, racism, sexism, inappropriate language, or other issues described in the agreement.)

I accept full responsibility for supervision if, and when, my child's use of the EIS is not in a school setting. I hereby give my permission to have my child use the electronic information services.

Parent or Guardian Name (print) _____

Signature _____ Date _____

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Part III - Administrative, Procedural, and Miscellaneous

Tax Treatment of Employer-Provided Cell Phones

Notice 2011-72

PURPOSE

This notice provides guidance on the tax treatment of cellular telephones or other similar telecommunications equipment (hereinafter collectively "cell phones") that employers provide to their employees primarily for noncompensatory business purposes.

BACKGROUND

Section 2043 of the Small Business Jobs Act of 2010, Pub.L.No. 111-240, (the Act) removed cell phones from the definition of listed property for taxable years beginning after December 31, 2009. The Act did not otherwise alter the requirement that an employer-provided cell phone is a fringe benefit, the value of which must be included in the employee's gross income, unless an exclusion applies, or the potential treatment of an employer-provided cell phone as an excludible fringe benefit. Since enactment of the Act, the IRS has received questions about the proper tax treatment of employer-provided cell phones. Accordingly, this notice addresses the treatment of employer-provided cell phones as an excludible fringe benefit.

Gross Income

Section 61 of the Internal Revenue Code (Code) defines gross income as all income, from whatever source derived. Section 61(a)(1) provides that gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. A fringe benefit provided by an employer to an employee is presumed to be income to the employee unless it is specifically excluded from gross income by another section of the Code. See Income Tax Regulations § 1.61-21(a).

Working Condition Fringe Benefits

Section 132(a)(3) of the Code provides that gross income does not include any fringe benefit which qualifies as a working condition fringe. Section 132(d) provides that "working condition fringe" means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under §§ 162 or 167.

Section 1.132-5(a)(1)(ii) of the Income Tax Regulations (Regulations) provides that if, under section 274 or any other section, certain substantiation requirements must be met in order for a deduction under §§ 162 or 167 to be allowable, then those substantiation

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requirements apply when determining whether a property or service is excludable as a working condition fringe. See also Regulations § 1.132-5(c)(1).

Section 162(a) of the Code provides that a deduction is allowed for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. However, section 262(a) of the Code provides that, except as otherwise expressly provided, no deduction shall be allowed for personal, living, or family expenses.

In the case of certain listed property, as defined in section 280F(d)(4) of the Code, special heightened substantiation rules apply. Section 274(d)(4) of the Code provides that no deduction shall be allowed with respect to any listed property (as defined in § 280F(d)(4)), unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense or other item, (B) the use of the property, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons using the property.

The Act removed cell phones from the definition of listed property for taxable years beginning after December 31, 2009. Because the Act removed cell phones from the definition of listed property, the heightened substantiation requirements that apply to listed property no longer apply to cell phones for taxable years beginning after December 31, 2009.

De Minimis Fringe Benefits

Section 132(a)(4) of the Code provides that gross income does not include any fringe benefit which qualifies as a de minimis fringe. Section 132(e) defines a de minimis fringe as any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable. Except as specifically provided (i.e., occasional meal money or local transportation fare and reimbursements for public transit passes), a cash fringe benefit is not excludable as a de minimis fringe. See Regulations §1.132-6(c).

Guidance Regarding Employer-Provided Cell Phones

Many employers provide their employees with cell phones primarily for noncompensatory business reasons. The value of the business use of an employer-provided cell phone is excludable from an employee's income as a working condition fringe to the extent that, if the employee paid for the use of the cell phone themselves, such payment would be allowable as a deduction under section 162 for the employee.

An employer will be considered to have provided an employee with a cell phone primarily for noncompensatory business purposes if there are substantial reasons relating to the employer's business, other than providing compensation to the employee, for providing the employee with a cell phone. For example, the employer's need to contact the employee at all times for work-related emergencies, the employer's

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requirement that the employee be available to speak with clients at times when the employee is away from the office, and the employee's need to speak with clients located in other time zones at times outside of the employee's normal work day are possible substantial noncompensatory business reasons. A cell phone provided to promote the morale or good will of an employee, to attract a prospective employee or as a means of furnishing additional compensation to an employee is not provided primarily for noncompensatory business purposes.

This notice provides that, when an employer provides an employee with a cell phone primarily for noncompensatory business reasons, the IRS will treat the employee's use of the cell phone for reasons related to the employer's trade or business as a working condition fringe benefit, the value of which is excludable from the employee's income and, solely for purposes of determining whether the working condition fringe benefit provision in section 132(d) applies, the substantiation requirements that the employee would have to meet in order for a deduction under §162 to be allowable are deemed to be satisfied. In addition, the IRS will treat the value of any personal use of a cell phone provided by the employer primarily for noncompensatory business purposes as excludable from the employee's income as a de minimis fringe benefit. The rules of this notice apply to any use of an employer-provided cell phone occurring after December 31, 2009. The application of the working condition and de minimis fringe benefit exclusions under this notice apply solely to employer-provided cell phones and should not be interpreted as applying to other fringe benefits.

EFFECTIVE DATE

This notice is effective for all taxable years after December 31, 2009.

CONTACT INFORMATION

The principal author of this notice is Joseph Perera of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice contact Joseph Perera on (202) 622-6040 (not a toll-free call).

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Key Potential Violations of Federal EPA Regulations At K-12 Schools

The Environmental Protection Agency (EPA) developed the following list of potential violations of federal EPA regulations to remind K-12 schools of several of their key environmental requirements. This list does not represent all possible violations of federal EPA regulations at schools. Additional and more stringent federal, state, local, and tribal environmental regulations may also apply to K-12 schools. The key environmental, health, and safety statutes include, but are not limited to:

- Clean Air Act
- Clean Water Act
- Safe Drinking Water Act
- Solid Waste Disposal/Resource Conservation and Recovery Act (RCRA)
- Oil Pollution Act
- Superfund/ Comprehensive Environmental Response Compensation and Liability Act (CERCLA)
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
- Toxic Substances Control Act (TSCA)
- Occupational Safety and Health Act (OSHA)
- Food and Drug Act

For additional tools to promote compliance at K-12 schools, visit EPA's Healthy School Environment Resources website at: <http://cfpub.epa.gov/schools/index.cfm>. Also, visit the Campus Environmental Resource Center—Campus ERC website at www.campuserc.org which is a library of resources to support campus environmental performance improvement and to better understand environmental regulations.

Asbestos Violations

- Failure to develop and maintain an up-to-date Asbestos Management Plan; a Plan is required even if the school is asbestos-free
- Failure to maintain copies of the Asbestos Management Plan in both the Local Education Agency's and the schools's administrative offices

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- Failure to notify parent, teacher, and employee organizations at least once a year about the availability of the Asbestos Management Plan for review and to maintain a copy of the notification in the Plan
- Failure to describe in the Asbestos Management Plan the steps taken to notify workers and building occupants, or their legal guardians, about asbestos-related activities at least once each school year
- Failure to appoint a Designated Person to oversee asbestos-related activities and ensure compliance with the Asbestos Hazardous Emergency Response Act (AHERA)
- Failure to provide asbestos training to custodial and maintenance staff
- Failure to identify all locations of suspected asbestos-containing building materials
- Failure to take and analyze bulk samples
- Failure to conduct six-month periodic surveillance
- Failure to conduct triennial reinspections
- Failure to post warning labels in routine maintenance areas (e.g., boiler rooms)
- Failure to notify EPA of any renovation or demolition involving removal or disturbance of asbestos-containing materials greater than 160 square feet or 260 linear feet
- Failure to use properly trained and accredited asbestos personnel

Chlorofluorocarbon (CFC) Violations

- Failure to have all air conditioning units and refrigeration equipment serviced by certified personnel to handle and recover chlorofluorocarbon (CFC) refrigerants

Combustion Source Violations

- Failure to obtain, if applicable, a permit for combustion products from boilers
- Failure to notify and report the installation of new boilers greater than 10 million BTUs/hour

Hazardous Waste Violations

- Failure to make proper hazardous waste determinations
- Failure to provide proper labeling on hazardous waste containers
- Failure to keep hazardous waste containers closed when not in use

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- Failure to keep incompatible wastes segregated
- Failure to properly manage and dispose of hazardous wastes (do not throw down the drain or in the garbage)
- Failure to use hazardous waste manifests

Oil Storage Tank Violations

- Failure to monitor underground storage tanks
- Failure to upgrade/replace/close underground storage tanks by December 22, 1998
- Failure to provide secondary containment for an aboveground oil storage tank holding more than 1,320 gallons
- Failure to have a Spill, Prevention, Control, and Countermeasures (SPCC) plan in place for an aboveground oil storage tank holding more than 1,320 gallons
- Failure to annually file a Tier 2 chemical inventory information form under the Emergency Planning and Community Right to Know Act (EPCRA) with the local fire department, the Local Emergency Planning Commission, and the State Emergency Response Commission for aboveground and underground oil storage tanks holding more than 1320 gallons

Underground Injection Control Violations

- Cesspools (no septic tank, only a leaching pit) that serve 20 or more persons are banned
- Failure to have septic systems (includes septic tank) inventoried and authorized to operate if they serve 20 or more persons and discharge to a leach field or to a cesspool/leaching pit
- Failure to have outdoor storm water drains that discharge to a drywell(s) inventoried and authorized to operate
- Failure to inventory any shop or laboratory drain that discharges to a drywell, septic system, or leach field and obtain a permit, if applicable, to continue operation

Pesticide Violations

- Failure to apply pesticides in accordance with label instructions. For most commercial pesticides, the instructions include application by a certified applicator, under appropriate weather conditions, and with certain reporting.

Polychlorinated Biphenyls (PCBs) Violations

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- Failure to properly manage PCB oil or PCB contaminated wastes, including but not limited to compliance with marking, record keeping, storage, inspection, and proper disposal requirements. If a school owns an electrical transformer or a large electrical capacitor, these may contain PCB oil. PCBs may also be found in older (pre-1980) fluorescent light ballasts and can become an issue if the ballasts are leaking.

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**STATUTES, CODE OF FEDERAL REGULATIONS OR ADMINISTRATIVE
CODE APPLICABLE TO THE POLICIES AND DISCUSSION**

56302 Federal Register / Vol. 76, No. 177 / Tuesday, September 13, 2011 / Rules and Regulations

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.500 by revising paragraphs (c) and (k) to read as follows:

§ 54.500 Terms and definitions.

* * * * *

(c) *Elementary school.* An “elementary school” means an elementary school as defined in 20 U.S.C. 7801(18), a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

* * * * *

(k) *Secondary school.* A “secondary school” means a secondary school as defined in 20 U.S.C. 7801(38), a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law except that the term does not include any education beyond grade 12.

* * * * *

3. Amend § 54.501 by revising the section heading and revising paragraph (a)(1) to read as follows:

§ 54.501 Eligibility for services provided by telecommunications carriers.

(a) * * *

(1) Only schools meeting the statutory definition of “elementary school” or “secondary school” as defined in § 54.500(c) or (k) of these rules, and not excluded under paragraphs (a)(2) or (a)(3) of this section shall be eligible for discounts on telecommunications and other supported services under this subpart.

* * * * *

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4. Amend § 54.503 by revising paragraph (c)(2)(i) to read as follows:

§ 54.503 Competitive bidding requirements.

* * * * *

(c) * * *

(2) * * *

(i) The schools meet the statutory definition of “elementary school” or “secondary school” as defined in § 54.500(c) or (k) of these rules, do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.

* * * * *

5. Amend § 54.504 by revising paragraph (a)(1)(i) to read as follows:

§ 54.504 Requests for services.

(a) * * *

(1) * * *

(i) The schools meet the statutory definition of “elementary school” or “secondary school” as defined in § 54.500(c) or (k) of these rules, do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.

* * * * *

6. Amend § 54.507 by revising paragraph (g)(1)(i) to read as follows:

§ 54.507 Cap.

* * * * *

(g) * * *

(1) * * *

(i) The Administrator shall first calculate the demand for services listed under the telecommunications services, telecommunications, and Internet access categories on the eligible services list for all discount levels, as determined

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

by the schools and libraries discount matrix in § 54.505(c). These services shall receive first priority for the available funding.

* * * * *

7. Amend § 54.520 by revising paragraphs (a)(1), (a)(4), (c)(1)(i), (c)(1)(iii)(B), (c)(2)(i), (c)(2)(iii)(B), (c)(3)(i)(B), and by adding new paragraphs (c)(4), (c)(5), and (h) to read as follows:

§ 54.520 Children’s Internet Protection Act certifications required from recipients of discounts under the federal universal service support mechanism for schools and libraries.

(a) * * *

(1) School. For the purposes of the certification requirements of this rule, school means school, school board, school district, local education agency or other authority responsible for administration of a school.

* * * * *

(4) Statutory definitions.

(i) The term “minor” means any individual who has not attained the age of 17 years.

(ii) The term “obscene” has the meaning given such term in 18 U.S.C. 1460.

(iii) The term “child pornography” has the meaning given such term in 18

U.S.C. 2256.

(iv) The term “harmful to minors” means any picture, image, graphic image file, or other visual depiction that—

(A) Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(B) Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(C) Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

(v) The terms “sexual act” and “sexual contact” have the meanings given such terms in 18 U.S.C. 2246.

(vi) The term “technology protection measure” means a specific technology that blocks or filters Internet access to the material covered by a certification under paragraph (c) of this section.

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* * * * *

(c) * * *

(1) * * *

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. The school must enforce the operation of the technology protection measure during use of its computers with Internet access, although an administrator, supervisor, or other person authorized by the certifying authority under paragraph (a)(1) of this section may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose. This Internet safety policy must also include monitoring the online activities of minors. Beginning July 1, 2012, schools' Internet safety policies must provide for educating minors about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms and cyberbullying awareness and response.

* * * * *

(iii) * * *

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486, for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

* * * * *

(2) * * *

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. The library must enforce the

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operation of the technology protection measure during use of its computers with Internet access, although an administrator, supervisor, or other person authorized by the certifying authority under paragraph (a)(2) of this section may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

* * * * *

(iii) * * *

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486, for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

* * * * *

(3) * * *

(i) * * *

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments, and for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have)

56304 Federal Register / Vol. 76, No. 177 / Tuesday, September 13, 2011 / Rules and Regulations

not completed all requirements of CIPA for this funding year. * * * * *

(4) Local determination of content. A determination regarding matter inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may establish criteria for making such determination; review the determination made by the certifying school, school board, school district, local educational agency, library, or other authority; or consider the criteria employed by the certifying school, school board, school district, local

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educational agency, library, or other authority in the administration of the schools and libraries universal service support mechanism.

(5) Availability for review. Each Internet safety policy adopted pursuant to 47 U.S.C. 254(l) shall be made available to the Commission, upon request from the Commission, by the school, school board, school district, local educational agency, library, or other authority responsible for adopting such Internet safety policy for purposes of the review of such Internet safety policy by the Commission. * * * * *

(h) Public notice; hearing or meeting. A school or library shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

[FR Doc. 2011-23267 Filed 9-12-11; 8:45 am]

BILLING CODE 6712-01-P

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IRS Issues Guidance on Tax Treatment of Cell Phones; Provides Small Business Recordkeeping Relief

IR-2011-93, Sept. 14, 2011

WASHINGTON — The Internal Revenue Service today issued guidance designed to clarify the tax treatment of employer-provided cell phones.

The guidance relates to a provision in the [Small Business Jobs Act of 2010](#), enacted last fall, that removed cell phones from the definition of listed property, a category under tax law that normally requires additional recordkeeping by taxpayers.

The Notice issued today provides guidance on the treatment of employer- provided cell phones as an excludible fringe benefit. The Notice provides that when an employer provides an employee with a cell phone primarily for noncompensatory business reasons, the business and personal use of the cell phone is generally nontaxable to the employee. The IRS will not require recordkeeping of business use in order to receive this tax-free treatment.

Simultaneously with the Notice, the IRS announced in a [memo](#) to its examiners a similar administrative approach that applies with respect to arrangements common to small businesses that provide cash allowances and reimbursements for work-related use of personally-owned cell phones. Under this approach, employers that require employees, primarily for noncompensatory business reasons, to use their personal cell phones for business purposes may treat reimbursements of the employees' expenses for reasonable cell phone coverage as nontaxable. This treatment does not apply to reimbursements of unusual or excessive expenses or to reimbursements made as a substitute for a portion of the employee's regular wages.

Under the guidance issued today, where employers provide cell phones to their employees or where employers reimburse employees for business use of their personal cell phones, tax-free treatment is available without burdensome recordkeeping requirements. The guidance does not apply to the provision of cell phones or reimbursement for cell-phone use that is not primarily business related, as such arrangements are generally taxable.

Details are in the memo and in [Notice 2011-72](#), posted today on IRS.gov.

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

DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE Washington, D.C. 20224

September 14, 2011

Control Number: SBSE-04-0911-083

Expiration Date: September 19, 2012

Impacted IRM(s): 4.23.5

MEMORANDUM FOR ALL FIELD EXAMINATION OPERATIONS

FROM: Shenita Hicks /s/ **Shenita Hicks** Director, Examination, SB/SE

John Imhoff /s/ **John Imhoff** Director,
Specialty Programs, SB/SE

David Horton /s/ **David Horton**
Director, Field Specialists, LB&I

Clifford J. Gannett /s/ **Clifford J. Gannett**
Acting Director, Government Entities, TE/GE

SUBJECT: Interim Guidance on Reimbursement of Employee Personal Cell Phone Usage
in light of Notice 2011-72

The purpose of this memorandum is to provide audit guidance to examiners regarding employers that reimburse their employees for the business use of an employee's personal cell phone. This document is not intended to be a technical position, but to provide guidance to examiners who encounter this issue.

Notice 2011-72 addresses the tax treatment of employer-provided cell phones for noncompensatory purposes. The Notice provides that, for tax years after December 31, 2009, the IRS will treat the employee's use of employer-provided cell phones for reasons related to the employer's trade or business as *a working condition fringe benefit, the value of which is excludable from the employee's income*. However, the cell phone must be issued primarily for noncompensatory business reasons. For purposes of determining whether the working

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Policy Services

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condition fringe benefit provision in § 132(d) applies, the substantiation requirements that must be satisfied by the employee for an allowable deduction under § 162 are deemed to be satisfied. *Additionally, any personal use of the employer-provided cell phone will be treated as a de minimis fringe benefit, excludable from the employee's gross income under § 132(e) of the Code.*

Notice 2011-72 does not address the treatment of reimbursements received by employees from employers for the business use of an employee's personal cell phone.

In cases where employers, for substantial noncompensatory business reasons, require employees to maintain and use their personal cell phones for business purposes and reimburse the employees for the business use of their personal cell phones, examiners should analyze reimbursements of employees' cell phone expenses in a manner that is similar to the approach described in Notice 2011-72. Specifically, in cases where employers have substantial business reasons, other than providing compensation to the employees, for requiring the employees' use of personal cell phones in connection with the employer's trade or business and reimbursing them for their use, examiners should not necessarily assert that the employer's reimbursement of expenses incurred by employees after December 31, 2009, results in additional income or wages to the employee. However, the employee must maintain the type of cell phone coverage that is reasonably related to the needs of the employer's business, and the reimbursement must be reasonably calculated so as not to exceed expenses the employee actually incurred in maintaining the cell phone. Additionally, the reimbursement for business use of the employee's personal cell phone must not be a substitute for a portion of the employee's regular wages. Arrangements that replace a portion of an employee's previous wages with a reimbursement for business use of the employee's personal cell phone and arrangements that allow for the reimbursement of unusual or excessive expenses should be examined more closely.

- Examples of substantial noncompensatory business reasons for requiring employees to maintain personal cell phones and reimbursing them for their use include: (1) the employer's need to contact the employee at all times for work-related emergencies; and (2) the employer's requirement that the employee be available to speak with clients at times when the employee is away from the office or at times outside the employee's normal work schedule (i.e., clients are in different time zones).
- An example of a reimbursement arrangement that does not result in additional income or wages is as follows: an employer has a substantial noncompensatory business reason for requiring the employee to maintain a personal cell phone to facilitate communication with the employer's clients during hours outside the employee's normal tour of duty in the office and reimbursing the employee for the use of the phone. The employee uses the cell phone for both business purposes and personal purposes and the employee's basic coverage plan charges a flat-rate per month for a certain number of minutes for domestic calls. The employer

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reimburses the employee for the monthly basic plan expense to enable the employee to maintain contact with business clients throughout the United States after hours.

- Examples of reimbursement arrangements that may be in excess of the expenses reasonably related to the needs of the employer's business and should be examined more closely include: (1) reimbursement for international or satellite cell phone coverage to a service technician whose business clients and other

business contacts are all in the local geographic area where the technician works; or

(2) a pattern of reimbursements that deviates significantly from a normal course of cell phone use in the employer's business (i.e., an employee received reimbursements for cell phone use of \$100/quarter in quarters 1 through 3, but receives a reimbursement of \$500 in quarter 4).

If you have any questions regarding these guidelines, you may contact Laird MacMillan, Senior Program Analyst.

cc: www.irs.gov

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POLICY SERVICES

ADVISORY

Volume 9, Number 2

February 2012

CONTENTS

Policy Advisory No. 93-----Required Bullying Prevention Program

Introductory Comments

The following advisory and discussions regard the requirement to comply with 22-2-21 NMSA which states:

"The department shall establish guidelines for bullying prevention policies to be promulgated by local school boards. Every local school board shall promulgate a bullying prevention policy by August 2011. Every public school shall implement a bullying prevention program by August 2012."

Particularly, this advisory is in response to the Public Education Department (PED) memo of February 2012 requiring each school public school to provide assurances that the bullying prevention program will be in place.

In 2007 PED required a bullying prevention policy be put in place by August of that year. Policy Advisory 37 conformed to the PED requirements of 6.12.7.8 NMAC titled Bullying Prevention. There have been no changes to this regulation since that date. Thus, each district that adopted advisory 37 and followed the guidance of that advisory has in place bullying prevention policies as required by PED and in conformance with 22-2-21 NMSA.

Recent federal e-rate regulations also require districts to institute a cyberbullying prevention program by July 2012 as found in Policy Advisory 90 issued in January of 2012.

Policy advisory discussion.

Policy Advisory No. 93. Required Bullying Prevention Program

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By August 1, 2007 each district was to submit their approved policies for bullying prevention to PED. At that time New Mexico School Boards Association Policy Service (NMSBAPS) recommended that all of the following policies be sent in, JII, JII-R, JII-EA, JII-EB, JK, JK-R, JK-EA, JKD and JKE. If your district has the policy JII from advisory 37 with the NMSBAPS copyright on the top then, with the other policies mentioned, your anti-bullying policies comply with the PED requirements.

This author considers the bullying prevention policy JII to be the framework for a required bullying prevention program.

Please note that there is no requirement under 22-2-12 NMSA that the district have a bullying prevention policy, only that the PED provide guidelines for bullying prevention policies. That law requires of School districts that each of the schools in the district have *bullying prevention programs*. A bullying prevention program, in the vernacular of school systems is a program of instruction for students that has the intention of preventing bullying. The policy JII and cross referenced other policies provides for all of the requirements of bullying prevention included by PED regulation. The development of the program to be added to your curriculum (presumably in addition to the anti-bullying already required in the health education curriculum by 6.12.7.8 NMAC) is subject to local determination and you may find assistance from PED for the development. The editor noted that on the PED bullying prevention program assurance form PED included references to six different programs.

Please note that *Policy Advisory 90 referenced a cyberbullying prevention program that is required by the federal e-rate laws to be implemented by July 2012 just before the August deadline for the Bullying Prevention program*. Each district should try to incorporate both requirements as they look at or prepare a program for possible implementation in all schools.

Summary: Reading the law, 22-2-12 NMSA, it appears PED is to provide guidelines for policies on bullying prevention and Districts are to have *bullying prevention policies* implemented by August 2011 (an already past deadline). Schools are to have *bullying prevention programs implemented* by August 2012.

Nothing was said about giving assurances to PED in April of 2012 in the law. So far, there have been no changes to 6.12.7.1 et seq. NMAC since 2006 that would add PED requirements to 22-2-12 NMSA. However, districts are required by other statutes to report as requested to PED, but the idea of an assurance prior to development of a program seems a bit preemptive.

Please do not send your bullying prevention programs to policy service for inclusion in the your policy manual. That program will be a part of a district adopted

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curriculum, subject to being maintained in the form of a curriculum guide just as programs in mathematics, English, science and others.

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POLICY SERVICES

ADVISORY

Volume 9, Number 3

June 2012

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Policy Advisory No. 94

IHBC—Programs for at-risk Disadvantaged Students (Student Assistance Team)

Introductory Comments

The following advisory and discussions regard the requirement to comply with 6.29.1.9 NMAC along with State and Federal guidelines concerning physical restraint and seclusion.

All districts received a memo from the Public Education Department regarding "Federal and State Guidance Regarding the Use of Physical Restraint and Time-Out Rooms as Student Behavioral Interventions"

The May 15 memo from the Public Education Department (PED) stated: "Both federal and state guidance intend that these guidelines apply(s) to **all** students—not just students with disabilities."

The guidance memo called attention to New Mexico Administrative Code 6.29.1.9 which states in subsection D: "Student intervention system (e.g., SAT, RtI, PBS). The school and district shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior."(emphasis added)

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In accord with 6.29.1.9 D NMAC which describes the three-tier model of student intervention, the school district must use this system in dealing with behavioral interventions. As with many federal laws and rules regarding students with disabilities, the rules are sometimes interpreted to apply only to students with disabilities. The State memo was intended to bring attention to the fact that the behavioral intervention programs spoken to in the Code as in the Federal guidelines are intended to apply to all students.

Policy advisory discussion.

Policy Advisory No. 94

IHBC—Programs for at-risk Disadvantaged Students (Student Assistance Team)

First, in regard to the State guidance, districts should have implemented the guidelines of The Student Assistance Team and the Three-Tier Model of Student Intervention as required by 6.29.1.9 NMAC following the addition of the requirement to the New Mexico Administrative Code in December of 2009. The New Mexico Policies and Procedures For Special Education Services prepared by the Public Education Department Special Education Bureau, Chapter 1 part IV, and required to be followed, already contain the procedures to be followed in the Three-Tier Model of Student Intervention. The model has been incorporated in special education operating procedures by most districts through reference in the Special Education policy. As with the many Federal and State regulations, it would be impossible to incorporate all of them into your policy. **The guidance material and law do not require that you add these to your policies**, but guidance suggest they be incorporated as standard operating procedures. As an afterthought, the May 15 PED memo suggests that districts develop policies and procedures that are aligned with the Federal and State guidance.

To emphasize the application of the recommended processes and procedures (guidance) NMSBA Policy Services is providing a policy that will establish Student Assistance Teams at every school, if adopted. Also, as an exhibit to that policy, the fifteen cautions (principles) given by the Federal guidance document regarding the use of restraint and seclusion will be exhibited. Cross references to policies on student discipline and conduct are provided to encourage the reading and understanding of related policies and options for correcting behavior.

NMSBA Policy Services recommends the following policy related to the implementation of a Student Assistance Team should the district wish to designate compliance with both the Federal Guidelines and the NMAC. It is based on the model provided in 6.29.9.1 D NMAC and references the procedures required by 6.31.2.10 NMAC.

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I-2500

IHBC

**PROGRAMS FOR AT-RISK /
DISADVANTAGED STUDENTS**

(Student Assistance Team)

The Student Assistance Team (SAT) shall operate within every building in the District. The purpose of the SAT is to provide academic and/or behavioral support for students who are experiencing difficulties in the general education setting. The SAT is made up of the classroom teacher, the building principal or designee, the student's parents and other individuals with the expertise to provide recommendations and support for the student in need. The SAT will review all the relevant information collected and suggest appropriate interventions including classroom support and parent follow-up. This process may take 9 – 18 weeks, require multiple SAT meetings, on-going revision of intervention strategies, and detailed data collection and documentation of student progress.

The SAT process is directly tied to Promotion/Retention/Remediation.

The District adheres to the three-tiered model of student intervention as required by current state regulations at NMAC 6.29.1.9 D.

The three-tiered model of student intervention is described as follows:

- If general screening, a referral from a parent, a school staff member or other information available to a public agency suggests that a particular student may be experiencing significant difficulties in school, a properly constituted student assistance team (SAT) in the school shall:
 - Ensure that adequate screening in the areas of general health and well-being, language proficiency status, and academic levels of proficiency has been completed as part of broad general screening of all students in the District, in addition to addressing culture and acculturation, socioeconomic status, possible lack of instruction, and teaching and learning styles in order to rule out other possible causes of the student's educational difficulties and
 - Conduct the SAT child study process and consider, implement and document the effectiveness of appropriate interventions through curriculum-based measures (CBM);

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Policy Services

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- If, however, a student has an obvious disability or a serious and urgent problem, the SAT address the student's needs promptly on an individualized basis.
- If curriculum-based progress monitoring demonstrates that the student's response to intervention has not been positive and significant after no more than 18 weeks, the SAT may refer the student for a full special education assessment, or it may resume the child study process to implement additional tier two interventions.
- If curriculum-based progress monitoring demonstrates that the student's response to intervention has been positive and significant after no more than 18 weeks, the SAT may continue to require the implementation of those interventions until the student no longer requires the interventions.

Adopted: date of manual adoption

CROSS REF.: IHB - Special Instructional Programs
IHBA - Special Instructional Programs and Accomodations for Disadvantaged
IKE - Promotion, Retention, and Acceleration of Students
IKACA - Parent Conferences
JIC - Student Conduct
JK - Student Discipline

LEGAL REF.: 6.29.1.9 NMAC
6.31.2.10 NMAC
PED Manual, *the student assistance team and the three-tier model of student intervention*

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

**PROGRAMS FOR AT-RISK /
DISADVANTAGED STUDENTS**

(Fifteen Principles of Restraint and Seclusion)

- Every effort should be made to prevent the need for the use of restraint and for the use of seclusion.
- Schools should never use mechanical restraints to restrict a child's freedom of movement, and schools should never use a drug or medication to control behavior or restrict freedom of movement (except as authorized by a licensed physician or other qualified health professional)
- Physical restraint or seclusion should not be used except in situations where the child's behavior poses imminent danger of serious physical harm to self or others and other interventions are ineffective and should be discontinued as soon as imminent danger of serious physical harm to self or others has dissipated.
- Policies restricting the use of restraint and seclusion should apply to all children, not just children with disabilities.
- Any behavioral intervention must be consistent with the child's rights to be treated with dignity and to be free from abuse.
- Restraint or seclusion should never be used as punishment or discipline (e.g., placing in seclusion for out-of-seat behavior), as a means of coercion or retaliation, or as a convenience.
- Restraint or seclusion should never be used in a manner that restricts a child's breathing or harms the child.
- The use of restraint or seclusion, particularly when there is repeated use for an individual child, multiple uses within the same classroom, or multiple uses by the same individual, should trigger a review and, if appropriate, revision of strategies currently in place to address dangerous behavior; if positive behavioral strategies are not in place, staff should consider developing them.
- Behavioral strategies to address dangerous behavior that results in the use of restraint or seclusion should address the underlying cause or purpose of the dangerous behavior.
- Teachers and other personnel should be trained regularly on the appropriate use of effective alternatives to physical restraint

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and seclusion, such as positive behavioral interventions and supports and, only for cases involving imminent danger of serious physical harm, on the safe use of physical restraint and seclusion.

- Every instance in which restraint or seclusion is used should be carefully and continuously and visually monitored to ensure the appropriateness of its use and safety of the child, other children, teachers, and other personnel.
- Parents should be informed of the policies on restraint and seclusion at their child's school or other educational setting, as well as applicable Federal, State, or local laws.
- Parents should be notified as soon as possible following each instance in which restraint or seclusion is used with their child.
- Policies regarding the use of restraint and seclusion should be reviewed regularly and updated as appropriate.
- Policies regarding the use of restraint and seclusion should provide that each incident involving the use of restraint or seclusion should be documented in writing and provide for the collection of specific data that would enable teachers, staff, and other personnel to understand and implement the preceding principles.

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Relevant Statutory or Regulatory Information

§ 6.29.1.9. PROCEDURAL REQUIREMENTS

D. Student intervention system (e.g., SAT, RtI, PBS). The school and district shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior.

(1) In tier 1, the school and district shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status and academic levels of proficiency has been completed for each student enrolled. If through universal screening, a referral from a parent, a school staff member or other information available to a school or district suggests that a particular student needs educational support for learning or behavior, then the student shall be referred to the SAT for consideration of interventions at the tier 2 level.

(2) In tier 2, a properly-constituted SAT at each school, which includes the student's parents and the student (as appropriate), shall conduct the student study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing curriculum-based measures. In addition, the SAT shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis, which may include a referral for a multi-disciplinary evaluation to determine possible eligibility for special education and related services consistent with the requirements of Subsections D-F of 6.31.2.10 NMAC and federal regulations at 34 CFR Sec. 300.300.

(3) In tier 3, a student has been identified as a student with disability and deemed eligible for special education and related services, and an IEP is developed by a properly-constituted team, pursuant to Subsection B of 6.31.2.11 NMAC and federal regulations at 34 CFR Sec. 300.321.

(4) The department's manual, *the student assistance team and the three-tier model of student intervention*, shall be the guiding document for schools and districts to use in implementing the student intervention system.

§ 6.31.2.10. IDENTIFICATION, EVALUATIONS AND ELIGIBILITY DETERMINATIONS

B. The public agency shall follow a three tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning as set forth in Subsection D of 6.29.1.9 NMAC.

Please reference the following dated memo which may be found along with the Federal Guidance at www.ped.state.nm.us.

May 15, 2012

MEMORANDUM

TO: Superintendents, Principals, Charter School Administrators, Administrators for

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Policy Services

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State-Supported Schools, REC Directors, Special Education Directors
FROM: Julia Rosa Emslie, Director, Strategic Initiatives and
Constituent Services Division (signature on file)
RE: Federal and State Guidance Regarding the Use of Physical Restraint and Time-Out Rooms
as Student Behavioral Interventions

POLICY SERVICES

ADVISORY

Volume 9, Number 4

September 2012

CONTENTS

Policy Advisory No. 95	DBC—Budget Planning, Preparation, and Schedules
Policy Advisory No. 96	IMDB—Flag Displays
Policy Advisory No. 97	JLCB—Immunizations of Students

Introductory Comments

The following advisories and discussions are regarding changes pointed out by client Districts to statutes or regulations that were not considered when the policies in question were last revised. Policy Services is indeed fortunate to have a client base that reviews and and considers the models, providing feedback and additional information, where necessary. Though policy services makes every attempt to keep up with federal, state, and regulatory changes; any assistance by communicating noted modifications to those documents that may require a policy consideration will be appreciated.

Policy advisory discussion.

Policy Advisory No. 95

DBC—Budget Planning, Preparation, and Schedules

In a recent policy review a District financial officer brought to the attention of Policy Services that the statute and regulations relating to budget submission to the

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Public Education Department were incorrectly stated in the policy. The policy had been based upon an earlier regulation that had been modified in 2006 and not caught in the review process. The policy should now reflect the general requirements and give proper direction to the correct statutes and regulations, providing the necessary guidance for planning a budget submission and schedule. The exhibit DBC remains a suggested framework subject to local District practices and was not changed.

Policy Advisory No. 96

IMDB—Flag Displays

The change to IMDB was the result of a communication from a Superintendent noting the statutory citation for displaying the United States Flag and the New Mexico Flag was not in the quoted references. Policy Services has changed the policy to include the requirement of school display of both the United States Flag and the New Mexico Flag. A citation already included in the references at 6.10.2.9 NMAC explains how the United States and any State flags are to be displayed. Also, please note that the Code I-8350, which is a unique number for policy IMDB has been changed from I-8250, the latter having already been assigned to the policy IMD.

Policy Advisory No. 97

JLCB—Immunizations of Students

If was brought to the attention of Policy Services that the Public Health Division regulation 7.5.3.8 NMAC was being interpreted by the Public Health Division to require a particular form for exemption based on religious grounds even though the statute it is based on (24-5-3 NMSA) specifically states an affidavit or written affirmation is the preferred form. Additionally the Division has provided in the administrative code 7.5.3.8 NMAC that the principal and Superintendent of school have responsibilities to provide the particular form to the division within days of receipt.

Though it is doubtful that the Public Health Division has the authority to direct the activities of employee's of the Local School Board, lacking emergency authority, it is likely that the authority is vested in the Division to require the Board to provide the affidavit or written affirmation. The statute and the Public Education Department and Public Health Division interpretations may be read in their entirety in the support information found on the last pages of the advisory.

Assuming the Public Health Division can require the affidavit or written affirmation of the parent be sent to their attention, Policy Services has chosen to include a one sentence statement to that affect in the text of policy JLCB and has added the citations of New Mexico Statute and Public Health Division

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administrative code to the references of that policy. The one sentence statement should serve simply as a reminder of the obligation to provide the parent requested exemption to the Public Health Division. The determination of what office within the school is responsible for this is a decision that should be made by the Superintendent, ultimately, all assignment of duties falls to the Superintendent.. A logical place might be the office of the school nurse since it is a health related clerical activity.

One other caution, what is not clear in statute or regulation is whether the submission of the request for exemption is enough to allow student attendance given that immunization has not begun or is not in process. Part D of 7.5.3.8 NMAC contains an incomplete sentence possibly referencing this issue. It is the thought of Policy Services that the school should admit the child upon receipt of the parents affidavit or affirmation requesting exemption on religious grounds. The student should be allowed to attend until or unless the Public Health Division provides notice to the District that the exemption is denied. This is based upon the fact that the Public Health Division is the approving authority for immunization exemption requests submitted for school admission. Policy Services believes the intent of the legislature is that interpretations of the law regarding attendance should favor student attendance not withstanding a significant health risk to other students.

Policy Services regrets that currently the Statutes and Administrative Code pertaining to the Health Department are not being linked in the policy manual. As the newer version of the State Statutes and New Mexico Administrative Code are incorporated into the linkage, Policy Services will attempt to have those included.

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D-0300

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DBC

BUDGET PLANNING, PREPARATION, AND SCHEDULES

Deadline and Schedule Requirements

The Superintendent will present the tentative District budget to the Board for final review prior to the submission deadline of the State Public Education Department (PED) , ~~Public School finance division~~. The Board will conduct at least one (1) preliminary review of the Superintendent's budget recommendations prior to the final review. Public comment and input will be taken at all such preliminary meetings. The proposed budget shall be submitted by April 15 or later as approved by the Secretary of PED. ~~Ten (10) days prior to the budget hearing scheduled by the State Public Education Department, Public School Finance Division, the tentative District budget for the ensuing fiscal year will be submitted to the State Public Education Department.~~ Approval of the proposed budget by the Local Board shall be in a public hearing noticed in accord with the Open Meeting Act and held prior to June 20. ~~On or before July 1 of each year a tentative operating budget will be approved for the District by the State Public Education Department, pending approval of the final budget.~~ Certification of the proposed budget by the PED shall be on or before July 1. The approved and certified budget then constitutes the operating budget. ~~Before the first Monday of September of each year, the State Public Education Department, Public School Finance division, will approve and certify the final budget for the District. Adjustments made by the State Public Education Department, Public School Finance Division, will be made prior to the final approval.~~ On or before July 31, the District shall determine actual cash balances in all funds and report them on the most current form prescribed by the PED, making such adjustments in the budget as required to limit expenditure of the June credits in the operational subfund. The Superintendent shall develop a process for allocating resources from the budget to the schools and work sites. The allocation process shall address the priorities identified in the District's Educational Plan for Student Success (EPSS) action plans.

Adopted: date of manual adoption

LEGAL REF.: 22-8-6 NMSA
6.20.2.9 NMAC

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IMDB

FLAG DISPLAYS

The United States Flag and New Mexico Flag shall be displayed ~~and flown at all public schools on all days school is in session~~ in each classroom and on or within all public school buildings. No flag is to be flown at half-staff unless approved by the Superintendent of Schools and/or designee, who will follow state and federal guidelines.

Adopted: date of manual adoption

LEGAL REF.: 22-2-9 NMSA
22-5-4.5 NMSA (1978)
6.10.2.9 NMAC
6.10.2.8 NMAC

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JLCB

IMMUNIZATIONS OF STUDENTS

Subject to the exemptions as provided by law, no student shall be enrolled unless the student can present satisfactory evidence of commencement and completion of immunization in accordance with the immunization schedule and rules and regulations of the Public Health Division, except that a homeless student shall not be prevented from attendance until the fifth (5th) calendar day after enrollment.

The student is exempt from immunization pursuant to Section 6.12.2.8 NMAC upon filing with the governing authority:

- a statement or certificate signed by a licensed physician or certified nurse practitioner stating that the physical condition of the person seeking enrollment is such that immunization would seriously endanger the life or health of the person;
- an exemption granted by the public health division on the basis of:
 - notarized affidavits or written affirmation from an officer of a recognized religious denomination that such student's parents or guardians are bona fide members of a denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or
 - notarized affidavits or written affirmation from the student's parent or legal guardian that the student's religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agent.

▲ An original copy of an affidavit or written affirmation for either of the above exemption requests shall be forwarded to the Director of Public Health Division by the Superintendent of Schools within seven (7) days of receipt.

Exemption from obtaining the required immunizations, when approved, is valid for a period not to exceed nine (9) months and will not extend beyond the end of the school year in which the student is currently enrolled.

Any student with serologic confirmation of the presence of specific antibodies against a vaccine-preventable disease shall not be subject to immunization against that disease as a condition for attending school.

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The District will cooperate with ~~health departments~~ Public Health Division in programs of immunization. Parents' permission must be secured before a student may participate in such immunization projects.

Adopted: date of manual adoption

LEGAL REF.: 24-5-3 NMSA 7.4.3.8 NMAC
 6.12.2.8 NMAC 7.4.3.13 NMAC
 6.12.2.9 NMAC 7.5.3.8 NMAC
 6.12.2.10 NMAC

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Relevant Statutory or Regulatory Information

§ 22-8-6. Budgets; submission; failure to submit.

Statute text

- A. Prior to April 15 of each year, each local school board shall submit to the department an operating budget for the school District for the ensuing fiscal year. Upon written approval of the state superintendent [secretary of public education], the date for the submission of the operating budget as required by this section may be extended to a later date fixed by the state superintendent [secretary of public education].
- B. The operating budget required by this section may include:
- (1) estimates of the cost of insurance policies for periods up to five years if a lower rate may be obtained by purchasing insurance for the longer term; or
 - (2) estimates of the cost of contracts for the transportation of students for terms extending up to four years.
- C. The operating budget required by this section shall include a proposed breakdown for charter schools in the school District, by individual charter school, of the membership projected for each charter school, the total program units generated at that charter school and approximate anticipated disbursements and expenditures at each charter school.
- D. If a local school board fails to submit a budget pursuant to this section, the department shall prepare the operating budget for the school District for the ensuing fiscal year. A local school board shall be considered as failing to submit a budget pursuant to this section if the budget submitted exceeds the total projected resources of the school District or if the budget submitted does not comply with the law or with rules and procedures of the department.

History: 1953 Comp., § 77-6-6, enacted by Laws 1967, ch. 16, § 60; 1988, ch. 64, § 17; 1993, ch. 224, § 2; 1993, ch. 227, § 9; 1999, ch. 281, § 21; 1999, ch. 291, § 2.)

§ 6.20.2.9. BUDGET PREPARATION STANDARDS

Text

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- A. Every school District shall follow budget requirements stated in Sections 22-8-5 through 22-8-12.2, NMSA 1978, and procedures of the department in preparing, submitting, maintaining and reporting budgetary information. Budgetary control shall be at the function level. Over-expenditure of a function shall not be allowed.
- B. The proposed budget for the ensuing fiscal year shall be submitted to the department by April 15 of each year unless extended to a later date by the secretary of education.
- C. The department shall review the school District's projected revenues, including estimated tax production based on the most current assessed valuation from the local taxing authority and estimated cash carryover for all funds. The department shall confer with the school District before determining where additions or reductions to the budget will be incorporated.
- D. Approval of the proposed budget by the local board shall be in a public hearing held prior to June 20. The notice of public hearing for the adoption of the budget shall be published in accordance with the Open Meetings Act, Section 10-15-1 et seq. 1978, Public School Code, and local board policy. Certification of the proposed budget by the department shall be on or before July 1. The approved and certified budget then constitutes the operating budget.
- E. On or before July 31, school Districts shall determine their actual cash balances in all funds and report them on the most current form prescribed by the department. The operational subfund cash balance shall be adjusted by the amount of June credits for revenues received in that month from local school tax levy federal impact aid, and federal forest reserve, if any. The June credits shall be categorized as restricted cash balance and are unavailable for budgeting in the ensuing fiscal year. Cash balance carried forward from the previous fiscal year in the operational subfund shall not be used for salaries and benefits.
- F. The operating budget and any authorized adjustments, shall be integrated into the school District's accounting system after required approvals. Encumbrances shall be used as an element of control and integrated into the budget system.

History: (12-08-89, 02-03-93, 11-01-97, 01-15-99, 09-15-99; 6.20.2.9 NMAC -- Rn, 6 NMAC 2.2.1.9, 05-31-01; A, 11-30-06)

§22-2-9. United States Flag and New Mexico State Flag[s]; regulations.

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The flag of the United States and the flag of the State of New Mexico shall be displayed in each classroom and on or within all public school buildings of this state according to the regulations adopted by the state board [department].

History: 1953 Comp., § 77-2-9, enacted by Laws 1967, ch. 16, § 12; 1979, ch. 18, § 1; 1989, ch. 37, § 1.

§24-5-3 NMSA Exemption from immunization.

A. Any minor child through his parent or guardian may file with the health authority charged with the duty of enforcing the immunization laws:

- (1) a certificate of a duly licensed physician stating that the physical condition of the child is such that immunization would seriously endanger the life or health of the child; or
- (2) affidavits or written affirmation from an officer of a recognized religious denomination that such child's parents or guardians are bona fide members of a denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or
- (3) affidavits or written affirmation from his parent or legal guardian that his religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agent.

B. Upon filing and approval of such certificate, affidavits or affirmation, the child is exempt from the legal requirement of immunization for a period not to exceed nine months on the basis of any one certificate, affidavits or affirmation.

History: 1953 Comp., § 12-3-4.3, enacted by Laws 1959, ch. 329, § 3; 1979, ch. 42, § 1.

§ 6.12.2.8. REQUIREMENTS FOR IMMUNIZATION OF CHILDREN ATTENDING PUBLIC, NONPUBLIC, OR HOME SCHOOLS

A. The following definitions apply to this section.

- (1) "Administrative authority" means the superintendent, principal or the designee of such person.
- (2) "Public health division regulations" means those regulations adopted by the public health division of the department of health pursuant to the

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authority granted in Sections 24-5-1 to 24-5-6, NMSA 1978 and including the immunization schedule.

- (3) "Licensed physician" means a physician licensed to practice medicine or osteopathic medicine in New Mexico, another state or territory.
- (4) "Certified nurse practitioner" means an individual licensed as a certified nurse practitioner with prescriptive authority by the New Mexico board of nursing, another state or territory.
- (5) "Required immunizations" means those immunizations against diseases deemed to be dangerous to the public health by the public health division and set forth in its immunization schedule effective at date of enrollment.
- (6) "Satisfactory evidence of commencement and completion of immunization" means satisfactory evidence of a person having begun the process of immunizations in a statement, certificate or record signed by a duly licensed physician, certified nurse practitioner, or other recognized public or private health facility stating that the person has received at least the first in the series of required immunizations and is proceeding with the immunizations according to the prescribed schedule. Persons enrolling in schools who have begun the process of immunization shall have one month following the date of enrollment to complete the required immunizations and submit satisfactory evidence of completing the required immunizations or having continued the process of the required series.
- (7) "Satisfactory evidence of immunization" means a statement, certificate or record signed by a duly licensed physician, certified nurse practitioner, or other recognized, licensed health facility stating that the required immunizations have been administered to the person.

B. No student shall be enrolled in the public, nonpublic, or home schools in the state unless the student can present satisfactory evidence of commencement or completion of immunization in accordance with the immunization schedule and rules and regulations of the public health division.

C. Exemptions from immunization:

- (1) The student is exempt from immunization as required by Subsection B of this rule upon filing with the governing authority:
 - (a) a statement or certificate signed by a licensed physician or certified nurse practitioner stating that the physical condition of the person seeking enrollment is such that immunization would seriously endanger the life or health of the person; or
 - (b) an exemption granted by the public health division on the basis of:

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- (i) notarized affidavits or written affirmation from an officer of a recognized religious denomination that such child's parents or guardians are bona fide members of a denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or
 - (ii) notarized affidavits or written affirmation from his parent or legal guardian that his religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agent.
- (2) Exemption from obtaining the required immunizations is valid for a period not to exceed nine (9) months and will not extend beyond the end of the school year in which the child is currently enrolled.
- D. Disenrollment: If satisfactory evidence of commencement or completion of immunization or an exemption from immunization in accordance with Subsection C is subsequently determined to be invalid for any reasons and the student is unable to provide either valid satisfactory evidence of commencement or completion of immunization or a valid exemption from immunization in accordance with Subsection C, the administrative authority shall commence disenrollment proceedings.
- E. Administrative duty to report:
- (1) It is the duty of each school superintendent, whether of a public or nonpublic school, to cause to be prepared a record showing the required immunization status of every child enrolled in or attending a school under his (her) jurisdiction.
 - (2) These records must be kept current and available to public health authorities.
 - (3) The name of any parent or guardian who neglects or refuses to permit his (her) child to be immunized against diseases as required by rules and regulations promulgated by the public health division shall be reported by the school superintendent to the director of the public health division within a reasonable time after such facts become known to the superintendent.

History: (6.12.2.8 NMAC -- Rp, 6.12.2.7, 8, 9, 10 & 11 NMAC, 11-15-05)

End Notes

HIERARCHY NOTES: See 6.12.2 NMAC

7.5.3.8 EXEMPTIONS FROM IMMUNIZATION REQUIREMENT:

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- A. Exemption by membership in recognized religious denomination: Any parent or guardian belonging to a recognized religious denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing and who seek exemption from the compulsory student immunization requirements of Section 24-5-2 NMSA 1978 for their child shall present affidavits from an officer of the denomination stating that the parents or guardians are bona fide members of the recognized denomination and the religious teaching of the domination requires upon prayer or spiritual means alone for healing. 7.1.1 [sic] Upon filing such affidavit, the child is exempt from legal requirement for a period not to exceed nine (9) months on the basis of any one certificate.
- B. Exemption by certification of religious objection: A parent or guardian who cannot obtain an affidavit from an officer of a recognized denomination as described in Section 7-1 [sic], but whose religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agents, may apply for an exemption from immunization by submitting a certificate of conscientious objection to immunization.
- C. The certificate must be signed in the presence of a notary public.
- D. Upon presentation of a notarized certificate to the principal of the school to which a child seeks enrollment, the principal shall allow the (sic) either approved or disapproved by the director of the public health division.
- E. The director of the public health division or a qualified designee may disapprove a certificate for failure to fully complete it or for failure to allege beliefs and practices sufficient to warrant an exemption from immunizations for religious reasons consistent with the legislative intention of Section 24-5-3, as explained in opinion of the attorney general no.75-69, dated December 8, 1975.
- F. Every principal receiving a certificate of conscientious objection to immunization shall deliver the certificate to the superintendent of schools for the District by which the principal is employed within seven (7) days of the time the certificate has been received. The superintendent shall note on his or her records that a religious exemption has been claimed on behalf of each child so claiming and shall forward the original certificate to the director of public health division within seven (7) days of the time it has been received from the school principal.
- G. Within sixty (60) days of receipt of a certificate of conscientious objection to immunization, the director of the public health division, or the designee shall review the certificate to determine whether the certificate has been duly completed and notarized. The public health division shall investigate as may be appropriate to ascertain that the exemption is a bona fide claim of religious beliefs and practices. The public health director or the designee shall advise in writing the parents or guardian of the subject child, and the superintendent of

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the school District which the child is attending, and the principal of the school at which the child has been conditionally enrolled that the claimed religious exemption has been approved or disapproved. In the case of disapproval of a claim to religious exemption, the director of the public health division or designee shall state the reasons in the letter of notification.

- H. Every parent or guardian of a child whose claim on behalf of that child for religious exemption from the student immunization requirements is disapproved by the director of the public division shall have the right to pursue an administrative appeal from such disapproval. The manner and method of administrative appeal shall be determined by the secretary of the New Mexico department of health.

[01/14/76, 10/31/96; Recompiled 10/31/01]

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