

POLICY SERVICES

ADVISORY

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Policy Advisory Discussion

Policy Advisory No. 114. JLCG — Emergency Administration of Medications to Students. 22-33-1 et. seq. NMSA was passed in the 2014 legislative session directing the New Mexico Department of Health to promulgate rules and guidelines pursuant to the statutory language that would permit districts the option to maintain emergency medications under specific limitations. A district may choose to maintain albuterol in a school under specific conditions for use by the school nurse to administer in case of respiratory distress on that school campus. Separate from that option is the option to maintain epinephrine in specific dosages in a school under specific conditions for use by the school nurse and trained volunteers determined by the administration in case of an anaphylactic reaction (allergic reaction) on that school campus. **The notable issue here is that the school board has two options under specific conditions.**

The Statute makes it clear that the school board **may, but is not required**, to maintain these emergency medications. If the school board decides to maintain these medications, as covered by the statute, in schools within its jurisdiction, it shall follow the statute and health department regulations in recording, storage, use and replacement of outdated medications. The purpose of the statute and regulations, as stated in 7.30.12.6 NMAC, is to allow access to emergency medications in the school setting for the treatment of respiratory distress with albuterol and the treatment of anaphylactic reactions with epinephrine.

The Policy and regulation that follow reflect Policy Services best effort to write a document that will guide the district to comply with 22-33-1 et. seq. NMSA and 7.30.12 NMAC. It should be emphasized, however, that there are a number of other statutory and regulatory issues that are of interest and applicable to this issue in the final analysis. How some of these tangential statutes and regulations will affect the issue of compliance have not been predicted in this document.

The opinion of the author, for purposes of school policy, is that the health department regulations failed in some respects to comply with the 22-33-1 et. seq. NMSA. The statute requires an anaphylactic reaction prevention protocol, as recommended by the department of health, to minimize an allergic student's exposure to food allergies. This was not provided. The department of health also did not completely identify other agency regulations and statutes of applicability. The regulation also created conflicting internal issues with availability, use and storage of medications.

Concern for compliance

The statement that the school board must review and acknowledge in writing the rules by the health department is simply a redundancy since the statute requires board action through policy.

Albuterol

The law and regulation make it clear that albuterol can only be administered by the school nurse and further that the school nurse is responsible for record keeping compliance. The difficulties that appear to this author and that will have an effect on the school board are listed as follows.

- A Class D Medication Room as established by the board of pharmacy:
 - requires application and payment of fees for licensure per 61-11-14B NMSA (not mentioned in the regulation);
 - requires specifically naming the person or persons accessing and using the facility and medications;
 - requires specific storage temperature and other specifications though they were not readily apparent or stated in the health department regulations;
 - requires the employment of a consulting pharmacist; and
 - record keeping for albuterol requires compliance with three different agencies and their administrative code.
- The room is to be kept locked when the nurse or nurse assistant is not present.

- The current prevalent practice of keeping student medications to be dispensed during school hours in the health offices, in a locked medicine cabinet, available to those elected by the administration to administer the medications, may no longer be available under the conditions for storage and availability of albuterol (see policy and regulation JLCD).

Epinephrine

A school nurse and trained personnel may administer epinephrine but there are several conflicts regarding location of the drugs, supervision of the storage area, and time of availability that are outlined below.

- Trained personnel designated by the school nurse to administer epinephrine on a "voluntary basis outside of the scope of employment:"
 - is language intended to allow the trained personnel to agree to not be an agent of the school district when voluntarily administering epinephrine;
 - conflicts with the statute in that the statute indicates the trained personnel will be designated by the principal, not the school nurse;
 - appears to be an attempt to deflect liability from the school district, but will generate litigation.
- Epinephrine is to be kept in a location that is constantly monitored and unlocked during school operating hours:
 - the regulation defines operating hours as school time and after school activities;
 - regulation requires either the school nurse or a trained volunteer, by specific plan, be present to administer epinephrine during school time and after school activities; and
 - the epinephrine storage room is to be constantly monitored and kept unlocked during school time and after school activities, available to the school nurse and trained personnel;
- A special room will be needed to store epinephrine:
 - the school nurse's office cannot be the place for storage of epinephrine by regulation criterion requiring the school nurse or health aid's presence for that office to be unlocked or accessed;
 - the regulations speak to the epinephrine storage room being subject to board of pharmacy regulations but specifically requiring it to be monitored and unlocked during school time and after school activities, is in conflict with the regulations on the use of the school nurse's office for albuterol storage.

- the regulations indicate that the location for epinephrine storage will be determined by the school nurse and principal implying that it will be in a place other than the school nurse office.
- The question arises as to where to store epinephrine so that it will be available when:
 - the school has an extensive athletic activity field separate from the main school buildings for after school activities;
 - the school has scheduled sports activities after school; and
 - the school has weekend activities that may require the use of emergency medications;

Recommendation

The Policy and Regulation, **JLCG — Emergency Administration of Medications to Students**, are **not being recommended**, rather they are presented as a possible option for a school board to use to comply with the statutes and regulations should the school board wish to participate in either the maintenance of albuterol or epinephrine or both for emergency use in a school. Policy services recommends that the school board read carefully the statutes and regulations found in support of the policy and regulation regarding Administration of Emergency Medications to Students.

Policy Services was unable to determine the incidence of respiratory distress or allergic reactions among school age children on a school campus. It is suggested that the school board consult outside sources for information on the number and types of incidents that might require either albuterol or epinephrine in an emergency. It is also suggested the school board consult with the New Mexico Public Schools Insurance Agency and possibly legal counsel on risks that might be assumed by the school on **electing to maintain and dispense** emergency medications to treat respiratory distress and anaphylactic reactions.

Materials of a legal nature in support of this advisory may be found following the text of the Policies below. If you have any questions, or requests call Policy Services at (505) 469-0193 or E-mail Dr. Donn Williams, Policy Services Director [nmsbapolicy@cox.net].

Advisory 114

J-5450

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JLCG

EMERGENCY ADMINISTRATION OF MEDICATIONS TO STUDENTS

In compliance with 22-33-1 NMSA and under specific circumstances, the Board may apply for and receive albuterol aerosol canisters with spacers and standard-dose and pediatric-dose epinephrine auto-injectors, to be maintained and used in selected schools for emergency treatment of students in respiratory distress or anaphylactic shock respectively.

Respiratory Distress

Albuterol may be administered by a school nurse to a student who is perceived to be in respiratory distress, regardless of whether the student has been identified or documented as having asthma, has a prescription for albuterol or has supplied the school with albuterol. The procedure to be followed is:

- the nurse must be able to recognize the symptoms of respiratory distress after having had training provided by the department of health;
- the albuterol must be administered using a spacer;
- 911 must be called to initiate an emergency medical system;
- the nurse must continue to monitor the student's condition and deliver any additional treatment indicated until an emergency medical system responder arrives
- the parent, guardian or legal custodian of the student having respiratory distress shall be notified; and
- the nurse must take any other necessary actions based on training completed pursuant to the Emergency Medication in Schools Act [22-33-1 NMSA];
- a log of emergency medication use and outcome will be kept for five years by the nurse in the health office; and
- the nurse will complete a health department adverse events form and submit the form to the department within three working days.

Anaphylactic Shock

Epinephrine may be administered by a school nurse or other trained personnel designated by the school principal to a student who is reasonably believed to be having an anaphylactic reaction, regardless of whether the student has been identified or documented as having a severe allergy, has a prescription for epinephrine or has supplied the school with epinephrine auto-injectors; and

- the trained personnel must recognize the symptoms of respiratory distress from training approved by the department of health and documented by the school nurse, school principal or school leader;
- the epinephrine must be administered using an autoinjector;
- 911 must be called to initiate an emergency medical system;
- the student's condition must be continuously monitored and any additional treatment indicated delivered until an emergency medical system responder arrives;
- the parent, guardian or legal custodian of the student having an anaphylactic reaction shall be notified;
- the trained personnel must take any other necessary actions based on training completed pursuant to the Emergency Medication in Schools Act [22-33-1 NMSA];
- a log of emergency medication use and outcome will be kept for five years by the nurse in the health office; and
- the nurse will complete a health department adverse events form and submit the form to the department within three working days.

Adopted: date of manual adoption

LEGAL REF.: 22-5-4.3 NMSA
22-33-1 NMSA
7.30.12 NMAC

CROSS REF.: EBC-RC - Emergencies (First Aid)

J-5461

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JLCG-R

REGULATION

REGULATION

**EMERGENCY ADMINISTRATION OF MEDICATIONS
TO STUDENTS**

(Emergency Medications)

The purpose is to allow access to emergency medications in the school setting for the treatment of respiratory distress with albuterol and the treatment of anaphylactic reactions with epinephrine. Stock emergency medications are intended for students who have not previously been diagnosed with conditions leading to respiratory distress or anaphylaxis or who have a history of these conditions and do not have medications on their person or stored at school.

Standing Orders

The School Board may request a standing order for a supply of albuterol aerosol cannisters and spacers, or a supply of standard-dose and pediatric-dose epinephrine auto-injectors for such schools as it may determine from a department approved physician by submitting a written request in accord with 7.30.12.8 NMAC. Gifts, grants, bequests, or donations from any source may be used to carry out the above purpose, for which records will be kept for three years in the health office by the school nurse. The school nurse will also check all emergency medications periodically for expiration and supply, notifying the school principal when resupply is necessary.

Storage provisions

Albuterol must be stored in a Class D Medication Room in compliance with the board of pharmacy regulations which include requirements for procurement , storage, tracking and disposal of expired medications including:

- being stored in a secure location that is unlocked and readily accessible to a school nurse to administer albuterol; and
- in a manner consistent with procedures employed for other emergency medications in a locked medication cabinet, within manufacturer-recommended temperature ranges, in the nurse's office, kept unlocked while the nurse or nurses assistant are present.

Epinephrine must be stored in a room in compliance with the board of pharmacy regulations which include requirements for storage, record maintenance, and medication room audits or consulting pharmacist's visits including:

- being stored in a secure location that is unlocked and readily accessible to a school nurse or trained school personnel to administer epinephrine; and
- in a manner consistent with procedures employed for other emergency medications in a locked medication cabinet, within manufacturer-recommended temperature ranges, in a secure location where school staff are present full-time.

Disposal

Disposal of expired emergency medication shall be pursuant to board of pharmacy regulations and guidelines under the responsibility of the school nurse.

Training

- All training for the use of albuterol and epinephrine will be as reviewed and approved by the health department.
- School nurses will complete training minimally one time and refresher training on albuterol use may be recommended at a minimum of every five years.
- School employees, agents or volunteers designated by the school principal to administer epinephrine on a voluntary basis outside of the scope of their employment, will be trained annually.
- Training will be documented by the school nurse, school principal, or school leader, and kept in a training log in the school health office for a minimum of five years

Planning for and Preventing Respiratory Distress

Should the district approve having a supply of epinephrine in a school, it will:

- develop and implement a plan to have one or more trained personnel on the school premises during operating hours (operating hours is defined as during class time and after school activities) .
- follow an anaphylactic reaction prevention protocol, as recommended by the department of health, to minimize an allergic student's exposure to food allergies.

RELEVANT SUPPORT MATERIALS

22-33-1. Short title.

Sections 1 through 4 [22-33-1 to 22-33-4 NMSA 1978] of this act may be cited as the “Emergency Medication in Schools Act”.

History.

Laws 2014, ch. 50, § 1.

Effective dates.

Laws 2014, ch. 50 contains no effective date provision, but, pursuant to N.M. Const. art IV § 23, is effective on May 21, 2014, 90 days after adjournment of the legislature.

22-33-2 Definitions.

As used in the Emergency Medication in Schools Act [22-33-1 NMSA 1978]:

- A.** “albuterol” includes albuterol or another inhaled bronchodilator, as recommended by the department of health, for the treatment of respiratory distress;
- B.** “albuterol aerosol canister” means a portable drug delivery device packaged with multiple premeasured doses of albuterol;
- C.** “anaphylaxis” or “anaphylactic reaction” means a sudden, severe and potentially life-threatening whole-body allergic reaction;
- D.** “emergency medication” means albuterol or epinephrine;
- E.** “epinephrine” includes epinephrine or another medication, as recommended by the department of health, used to treat anaphylaxis until the immediate arrival of emergency medical system responders;
- F.** “epinephrine auto-injector” means a portable, disposable drug delivery device that contains a premeasured single dose of epinephrine;
- G.** “governing body” includes a governing body of a private school;
- H.** “health care practitioner” means a person authorized by the state to prescribe emergency medication;
- I.** “respiratory distress” includes impaired oxygenation of the blood or impaired ventilation of the respiratory system;
- J.** “school” means a public school, charter school or private school;
- K.** “spacer” means a holding chamber that is used to optimize the delivery of albuterol to a person’s lungs;
- L.** “stock supply” means an appropriate quantity of emergency medication, as recommended by the department of health; and
- M.** “trained personnel” means a school employee, agent or volunteer who has completed epinephrine administration training documented by the school nurse, school principal or school leader and approved by the department of health and who has been designated by the school principal or school leader to administer epinephrine on a voluntary basis outside of the scope of employment.

History.

Laws 2014, ch. 50, § 2.

Effective dates.

Laws 2014, ch. 50 contains no effective date provision, but, pursuant to N.M. Const. art IV § 23, is effective on May 21, 2014, 90 days after adjournment of the legislature.

22-33-3. Emergency medication; albuterol; epinephrine; stock supply; storage.

A. Each local school board or governing body may obtain a standing order for and may provide to schools within its jurisdiction a stock supply of albuterol aerosol canisters and spacers prescribed in the name of the school or school district by a health care practitioner employed or authorized by the department of health. Each school that receives a stock supply of albuterol aerosol canisters and spacers pursuant to this subsection shall store them:

- (1). in a secure location that is unlocked and readily accessible to a school nurse to administer albuterol;
- (2). pursuant to board of pharmacy regulations; and
- (3). within the manufacturer-recommended temperature range.

B. Each local school board or governing body may obtain a standing order for and may provide to schools within its jurisdiction a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors prescribed in the name of each school by a health care practitioner employed or authorized by the department of health. Each school that receives a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors pursuant to this subsection shall store them:

- (1). in a secure location that is unlocked and readily accessible to trained personnel;
- (2). pursuant to board of pharmacy regulations; and
- (3). within the manufacturer-recommended temperature range.

C. Each local school board or governing body shall dispose of expired emergency medication pursuant to board of pharmacy regulations or department of health rules.

D. A local school board or governing body or a school within its jurisdiction may accept gifts, grants, bequests and donations from any source to carry out the provisions of the Emergency Medication in Schools Act [22-33-1 NMSA 1978], including the acceptance of albuterol aerosol canisters and spacers and epinephrine auto-injectors from a manufacturer or wholesaler.

History.

Laws 2014, ch. 50, § 3.

Effective dates.

Laws 2014, ch. 50 contains no effective date provision, but, pursuant to N.M. Const. art IV § 23, is effective on May 21, 2014, 90 days after adjournment of the legislature.

22-33-4 Local school board or governing body; emergency medication; protocols and policies; training.

A. Each local school board or governing body that provides to schools within its jurisdiction a stock supply of albuterol aerosol canisters and spacers shall develop policies, based on department of health rules and recommendations, for a school nurse to administer albuterol to a student who is perceived to be in respiratory

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

distress, regardless of whether the student has been identified or documented as having asthma, has a prescription for albuterol or has supplied the school with albuterol. Such policies shall include procedures to:

- (1). recognize the symptoms of respiratory distress;
- (2). administer albuterol using a spacer;
- (3). call 911 to initiate an emergency medical system;
- (4). continue to monitor the student's condition and deliver any additional treatment indicated until an emergency medical system responder arrives;
- (5). notify the parent, guardian or legal custodian of the student having respiratory distress; and
- (6). take any other necessary actions based on training completed pursuant to the Emergency Medication in Schools Act [22-33-1 NMSA 1978].

B. Each local school board or governing body that provides to schools within its jurisdiction a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors shall develop policies based on the protocols in this section and department of health rules and recommendations, publish the policies on its web site and receive documentation that trained personnel have received training to:

- (1). administer epinephrine to a student who is reasonably believed to be having an anaphylactic reaction, regardless of whether the student has been identified or documented as having a severe allergy, has a prescription for epinephrine or has supplied the school with epinephrine auto-injectors; and
- (2). follow an anaphylaxis action protocol to:
 - (a). recognize symptoms of anaphylaxis;
 - (b). administer an epinephrine auto-injector to a student reasonably believed to be having an anaphylactic reaction;
- (c). call 911 to initiate an emergency medical system;
- (d). continue to monitor the student's condition and deliver any additional treatment indicated until an emergency medical system responder arrives;
- (e). notify the parent, guardian or legal custodian of the student having an anaphylactic reaction; and
- (f). take any other necessary actions based on training completed pursuant to the Emergency Medication in Schools Act [22-33-1 NMSA 1978].

C. Each school that receives a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors shall:

- (1). develop and implement a plan to have one or more trained personnel on the school premises during operating hours; and
- (2). follow an anaphylactic reaction prevention protocol, as recommended by the department of health, to minimize an allergic student's exposure to food allergies.

History.

Laws 2014, ch. 50, § 4.

Effective Dates

Laws 2014, ch. 50 contains no effective date provision, but, pursuant to N.M. Const. art IV § 23, is effective on May 21, 2014, 90 days after adjournment of the legislature.

7.30.12 NMAC

TITLE 7 HEALTH

CHAPTER 30 FAMILY AND CHILDREN HEALTH CARE SERVICES

PART 12 EMERGENCY MEDICATIONS IN SCHOOLS

7.30.12.1 ISSUING AGENCY: New Mexico Department of Health.

[7.30.12.1 NMAC - N, 02/27/2015]

7.30.12.2 SCOPE: This rule applies to public, private, or charter schools in New Mexico unless otherwise expressly limited.

[7.30.12.2 NMAC - N, 02/27/2015]

7.30.12.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the following statutory authorities: (1) the Department of Health Act, Section 9-7-6(E) NMSA 1978, which authorizes the secretary of the department of health to "...make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions;" (2) the Public Health Act, Section 24-1-3(G) and (O) NMSA 1978 and Section 24-31-1 NMSA 1978, which authorize the department to prescribe the duties of school nurses to maintain and enforce rules to carry out the provisions of the Public Health Act; and to promulgate rules pursuant to the Emergency Medication in Schools Act; and (3) the Emergency Medication in Schools Act, Sections 22-33-1 through 22-33-4 NMSA 1978, which authorizes the department to adopt regulations to carry out the provisions of the Emergency Medication in Schools Act.

[7.30.12.3 NMAC - N, 02/27/2015]

7.30.12.4 DURATION: Permanent.

[7.30.12.4 NMAC - N, 02/27/2015]

7.30.12.5 EFFECTIVE DATE: February 27, 2015, unless a later date is cited at the end of a section.

[7.30.12.5 NMAC - N, 02/27/2015]

7.30.12.6 OBJECTIVE: The purpose of this rule is to allow access to emergency medications in the school setting for the treatment of respiratory distress with albuterol and the treatment of anaphylactic reactions with epinephrine. Stock emergency medications are intended for students who have not previously been diagnosed with conditions leading to respiratory distress or anaphylaxis or who have a history of these conditions and do not have medications on their person or stored at school.

[7.30.12.6 NMAC - N, 02/27/2015]

7.30.12.7 DEFINITIONS:

- A. **“Adverse event form”** is a department form used by school nurses to report events with potential impact on the health of the students or the school, including administration of stock albuterol or epinephrine.
- B. **“Albuterol”** includes albuterol or another inhaled bronchodilator, as recommended by the department of health, for the treatment of respiratory distress.
- C. **“Albuterol aerosol canister”** means a portable drug delivery device packaged with multiple premeasured doses of albuterol.
- D. **“Anaphylaxis”** or **“anaphylactic reaction”** means a sudden, severe, and potentially life-threatening whole-body allergic reaction.
- E. **“BOP”** refers to the board of pharmacy.
- F. **“Class D Medication Room”** is specific for schools and is used only for emergency medications. The Class D Medication Room criteria is established by the board of pharmacy. The criteria includes requirements for procurement of medications, storage, tracking, and disposal of expired medications.
- G. **“Department”** means department of health.
- H. **“Emergency medication”** means albuterol or epinephrine.
- I. **“Epinephrine”** includes epinephrine or another medication, as recommended by the department of health, used to treat anaphylaxis until the immediate arrival of emergency medical system responders.
- J. **“Epinephrine auto-injector”** means a portable, disposable drug delivery device that contains a premeasured single dose of epinephrine.
- K. **“Governing body”** means a governing body of a private school.
- L. **“Health care practitioner”** means a person authorized by the state to prescribe emergency medication.
- M. **“PED”** means the public education department.
- N. **“Respiratory distress”** includes impaired oxygenation of the blood or impaired ventilation of the respiratory system.
- O. **“School”** means a public school, charter school, or private school.
- P. **“Spacer”** means a holding chamber that is used to optimize the delivery of albuterol to a person's lungs.
- Q. **“Stock supply”** means an appropriate quantity of emergency medication, as recommended by the department of health.
- R. **“Trained personnel”** means a school employee, agent, or volunteer designated by the school nurse to administer epinephrine on a voluntary basis outside of the scope of employment and who has completed department approved epinephrine administration training that has been documented by the school nurse, school principal, or school leader.

[7.30.12.7 NMAC - N, 02/27/2015]

7.30.12.8 EMERGENCY MEDICATIONS:

- A. **Standing Orders.**

(1) A physician employed or authorized by the department, may prescribe a standing order in the name of the school or school district for a stock supply of albuterol aerosol canisters and spacers, or a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors for use in accordance with this rule.

(2) Each local school board or governing body may request a standing order for and may provide to schools within its jurisdiction stock supplies of albuterol and epinephrine. In order to request a standing order, the school board must review and acknowledge in writing the rules and recommendations developed by the department for emergency medication use. All requests for standing orders must be in writing to a department approved physician. When the standing order is issued by the department approved physician, it will be sent to the requesting school district or governing body within one week of the request. A copy of the order will be kept by the department school health advocate for his or her assigned region.

(3) A pharmacist may dispense a stock supply of albuterol aerosol canisters and spacers or a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors pursuant to a standing order prescribed in accordance with this section. Medications may be directly obtained from the pharmacy by a school nurse or delivered to the school in accordance with the school's established procedure.

(4) All standing orders are renewed annually.

B. Storage provisions: School districts that decide to maintain and administer emergency medications will establish a Class D Medication Room in each school that stocks emergency medications in compliance with New Mexico BOP regulations. School nurses who maintain a Class D Medication Room license will be required to complete an annual medication room audit and submit it to the BOP.

(1) **Albuterol** - Each school that obtains a stock supply of albuterol aerosol canisters and spacers shall store them:

(a) in a secure location that is unlocked and readily accessible to a school nurse to administer albuterol;

(b) pursuant to BOP regulations, including requirements for storage, record maintenance, and medication room audits or consulting pharmacist's visits;

(c) within the manufacturer-recommended temperature range; and

(d) albuterol will be secured in a manner consistent with the procedure employed by the school nurse for other emergency medications; the medication cabinet, which is kept in the school nurse's office, is kept unlocked when the school nurse or school health assistant are present in the office; if the school nurse or school health assistant are not present, the school nurse's office will be locked.

(2) **Epinephrine** - Each school that obtains a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors shall store them:

(a) in a secure location that is unlocked and readily accessible to trained personnel;

(b) pursuant to BOP regulations including requirements for storage, record maintenance, and medication room audits or consulting pharmacist's visits;

(c) within the manufacturer-recommended temperature range; and

(d) epinephrine will be stored in a secure, unlocked location determined by the school nurse and principal; this location should be easily accessed by trained school personnel in the event of an emergency situation; a location is considered secure for the purposes of epinephrine storage if school staff are present full-time in that location; for example, the secretary's office or the main office.

C. Disposal: Albuterol and epinephrine - Each local school board or governing body shall dispose of expired emergency medication pursuant to BOP regulations. Expired medications will be placed in a separate, quarantined section of the medication room and disposed of per the Class D Medication Room regulations.

- (1) The school nurse will be responsible for proper disposal of expired medications.
- (2) The BOP is a resource for direction in proper disposal of expired medications.
- (3) Expired medications may be disposed of either by using a consultant pharmacist or by transferring the medications to a pharmacy with an appropriate transfer log.

D. Procurement and maintenance of emergency medications.

(1) A local school board or a school within its jurisdiction of a governing body may accept gifts, grants, bequests, or donations from any source to carry out the provisions of this rule, including:

(a) albuterol aerosol canisters and spacers or epinephrine auto-injectors from a manufacturer or wholesaler; or

(b) epinephrine or albuterol, or such other medication as the department deems appropriate, from a manufacturer or wholesaler of such medication; and

(c) this type of donation can be accepted if the medications are not expired and have been maintained properly.

(2) School districts or governing bodies may buy prescribed medications directly from pharmacies after obtaining a standing order.

(3) Schools will keep a record of any grants, gifts, bequests, or donations. The record is to be held at the school in the school office for three years and can be inspected by BOP, department personnel, and school administrative personnel upon request. The records will be kept in the school health office by the school nurse. Records may be kept electronically or in hard copy.

(4) Schools will maintain a supply of emergency medications:

(a) the supply will be replenished as medications are used according to the procedure in 7.30.12.8 NMAC; and

(b) medications in stock will be checked to verify that medications are not expired.

[7.30.12.8 NMAC - N, 02/27/2015]

7.30.12.9 TRAINING: School districts that decide to maintain and administer emergency medications will follow the department rules and recommendations, according to the following guidelines:

A. Use of albuterol:

(1) PED licensed school nurses will complete training on administering albuterol reviewed and approved by the department;

(2) current school nurses will complete the training at a minimum of one time and as determined by the department; new school nurses will complete the training as part of their orientation process, and then as determined by the department; and

(3) refresher trainings on albuterol may be recommended by the department, at a minimum of every five years.

B. Use of epinephrine:

(1) school personnel, including non-licensed personnel, will complete training on administering epinephrine that is reviewed and approved by the department;

(2) current school nurses will complete the training one time and new school nurses will complete the training as part of their orientation process;

(3) non-licensed personnel will complete the training annually; and

(4) refresher trainings on epinephrine for PED licensed school nurses may be recommended by the department, at a minimum of every five years.

C. Training will be documented and a training log will be kept at each school in the school health office for a minimum of five years. Training records may be maintained electronically or in hard copy.

[7.30.12.9 NMAC - N, 02/27/2015]

7.30.12.10

ADMINISTRATION OF EMERGENCY MEDICATIONS:

A. Use of albuterol:

(1) only a PED licensed school nurse, who has completed the requisite training, will administer inhaled albuterol on an emergency basis;

(2) if no school nurse is available, immediately call 911;

(3) inhaled stock albuterol will be given for treatment of respiratory distress only when the student is experiencing respiratory distress, per criteria that will be covered in training, and does not have medication available; albuterol may be administered to students who have not previously been diagnosed with conditions leading to respiratory distress and students who have a history of respiratory disease but do not have medication at school;

(4) when stock albuterol is used, 911 will be called immediately to activate the emergency response system;

(5) after administration of albuterol, the student's condition will be continuously monitored, and any additional treatment indicated will be given until an emergency medical system responder arrives;

(6) as soon as practicable, the parent, guardian, or legal custodian of the student having respiratory distress will be notified by phone or in accordance with contact information on file at the school;

(7) a log will be kept of when albuterol is used and the outcome of the student; these logs will be kept in the school health office at least five years; logs will be available for review upon request, per applicable federal and state privacy laws; logs will be maintained by the school nurse; logs may be either electronic or hard copy; and

(8) an adverse events form will be completed when albuterol is administered on an emergency basis; the form will be submitted within three working days to the regional school health advocate or the regional health officer; adverse events forms will be maintained by the department for a minimum of five years.

B. Use of epinephrine:

- (1) school personnel, including non-licensed personnel, who have completed the requisite training, may administer epinephrine on an emergency basis;
- (2) epinephrine will be given for treatment of severe anaphylactic reactions only when the student is experiencing signs of anaphylaxis, per criteria that will be covered in training, and does not have medication available; this includes students who have not previously been diagnosed with conditions leading to anaphylaxis and students who have a history of anaphylaxis and who do not have medication at school;
- (3) each school that receives a stock supply of standard-dose and pediatric-dose epinephrine auto-injectors shall:
 - (a) develop and implement a plan to have one or more trained personnel on the school premises during operating hours, which includes class time and after school activities; and
 - (b) follow an anaphylactic reaction prevention protocol, as recommended by the department, to minimize an allergic student's exposure to food allergies.
- (4) when stock epinephrine is used, 911 will be called immediately to activate the emergency response system;
- (5) after administration of epinephrine, the student's condition will be continuously monitored and any additional treatment indicated will be given until an emergency medical system responder arrives;
- (6) as soon as practicable, the parent, guardian, or legal custodian of the student will be notified by phone or in accordance with contact information on file at the school;
- (7) a log will be kept of when epinephrine is used and the outcome of the student; these logs will be kept in the school health office at least five years; logs will be available for review upon request, per applicable federal and state privacy laws; logs will be maintained by the school nurse; logs may be either electronic or hard copy;
- (8) an adverse events form will be completed when epinephrine is administered on an emergency basis; the form will be submitted within three working days to the regional school health advocate or the regional health officer; adverse events form will be maintained by the department for a minimum of five years.

[7.30.12.10 NMAC - N, 02/27/2015]

7.30.12.11 PREVENTION

- A. A vital part of the emergency medication in schools programs is preventing respiratory distress and severe allergic reactions.
- B. Recommendations will be developed by the department for school districts to use in the development of policies and procedures addressing both the use of the medications and prevention of respiratory distress and severe allergic reactions. The recommendations document will be issued upon request to interested school districts and governing bodies. The document will be available online through the office of school and adolescent health's website at <http://nmhealth.org/about/phd/hsb/osah/>.
- C. The following resources are available for school districts to use in developing prevention strategies, and can be obtained from the office of school and adolescent health's website at <http://nmhealth.org/about/phd/hsb/osah/> or by contacting the office at 300 San Mateo Blvd. NE, Suite 902, Albuquerque, NM 87108:
 - (1) the environmental protection agency's "indoor air quality: tools for schools;"

(2) the centers for disease control and prevention’s “voluntary guidelines for managing food allergies in schools and early care and education programs;” or

(3) the centers for disease control and prevention’s toolkit “**initiating change: creating an asthma-friendly school.**”

D. Other resources are available through the department’s asthma control program as well as the office of school and adolescent health.

[7.30.12.11 NMAC - N, 02/27/2015]

HISTORY OF 7.30.12 NMAC: [RESERVED]

POLICY SERVICES

ADVISORY

Volume 12, Number 3

June 2015

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Policy Advisory Discussion

Policy Advisory No. 115. GCCG — Professional / Support Staff Voluntary Transfer of Accrued Annual and Sick Leave. House Bill 403aa which passed in the first legislative session of 2015 directed New Mexico School Districts to implement policies pursuant to the statutory language that provide employees who earn annual or sick leave the opportunity to donate annual or sick leave to another employee for a medical emergency.

To begin the discussion of the transfer of annual and sick leave to another employee, Policy Services consulted United States Internal Revenue Services (IRS) rules and interpretations to determine how taxes on donated leave would be handled for federal tax purposes. In the process, a definition for a medical emergency was found as well as an IRS private letter response which explained the IRS position on transfer of leave in an organization. In a February 09, 2007, private letter response, the Internal Revenue Services Office of Associate Chief Counsel provided the following analysis on employment tax issues, which summarize the income issues raised by the transfer of leave, as described in New Mexico House Bill 403aa. A portion of that letter as applicable is found below:

"Section 61 of the Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived, including compensation for services.

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Policy Services

A basic principle of tax law is that a taxpayer's assignment to another person of his or her right to receive compensation for personal services does not relieve the taxpayer of the tax liability on the assigned income. See Lucas v. Earl, 281 U.S. 111, 50 S. Ct. 241, 74 L. Ed. 731 (1930), and Helvering v. Eubank, 311 U.S. 122, 61 S. Ct. 149, 85 L. Ed. 81, 1940-2 C.B. 209 (1940), 1940-2 C.B. 209. However, this general "assignment of income" rule does not apply to certain situations involving employer-sponsored leave plans. One situation involves bona fide employer-sponsored (medical) leave-sharing arrangements. Another involves certain qualified employer-sponsored major disaster leave-sharing plans.

The first exception to this general assignment of income rule involves the bona fide employer-sponsored (medical) leave-sharing arrangement described in Rev. Rule 90-29, 1990-1 C.B. 11. Under the plan in the ruling, employees who suffer medical emergencies may qualify to receive leave surrendered to the employer by other employees or leave deposited by its employees in an employer sponsored leave bank. The ruling holds that the amounts paid by the employer to a leave recipient pursuant to the plan are includable in the gross income of the recipient under § 61 of the Code as compensation for services provided by that recipient to the employer. Rev. Rule 90-29 further concludes that these amounts are considered "wages" for employment tax purposes, including the Federal Insurance Contributions Act ("FICA"), the Federal Unemployment Tax Act ("FUTA"), the Railroad Retirement Tax Act ("RRTA"), and the Railroad Unemployment Repayment Tax ("RURT"), and for income tax withholding purposes, unless otherwise excluded by a specific provision of the Code. The revenue ruling also holds that an employee who surrenders leave to the employer or deposits leave in the leave bank does not realize any income and incurs no deductible expense or loss either upon surrender or deposit of the leave or its use by the recipient employee.

*Another exception involves qualified employer-sponsored major disaster leave-sharing plans such as plans that involve amounts paid pursuant to a leave-sharing plan to assist employees affected by a major disaster declared by the President of the United States. ******

IRS Rev. Rule 90-29, 1990-1 C.B. 11 describes a medical emergency for purposes of shifting of the tax burden as follows: "A 'medical emergency' is defined under the plan as a medical condition of the employee or a family member of the employee that will require the prolonged absence of the employee from duty and will result in a substantial loss of income to the employee because the employee will have exhausted all paid leave available apart from the leave-sharing plan."

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Policy Services

The above explanation and definition provide a base or starting point given that Federal Law and Rule supersede State law and Rule. The assignment of income doctrine is that except as otherwise provided by law, a taxpayer's assignment to another person of his or her right to receive compensation for personal services does not relieve the taxpayer of the tax liability on the assigned income. Rule 90-29 indicates the shift of tax burden from the donor to the recipient based on an employer sponsored leave plan. The three key elements therefor, are an employee controlled donation of leave plan, a transfer of leave time in dollar amounts, and adhering to the definition of medical emergency as approved in Rule 90-29.

Rule 90-29 provides that in leave sharing:

- The assignment of income doctrine is that except as otherwise provided by law, a taxpayer's assignment to another person of his or her right to receive compensation for personal services does not relieve the taxpayer of the tax liability on the assigned income.
- Rule 90-29 provides that an employee who suffers a medical emergency as defined in the law may qualify to receive leave surrendered to the employer by other employees or deposited by its employees in an employer sponsored leave bank.
- a written application describing the medical emergency must be submitted to the employer by or on behalf of the employee requesting additional paid leave under the leave-sharing plan.
- The rule further indicates that the amounts paid by the employer to a leave recipient through the plan are included in the gross income of the recipient and not that of the donor of the leave.
- The applicant must have exhausted all of his or her paid leave to receive leave sharing.
- Payments of donated leave, must be made on a dollar for dollar value basis and converted from the donor to the recipients normal rate of compensation.
- The leave sharing plan by the employer must have restrictions on the amount of leave that can be surrendered and the manner in which leave will be granted to eligible leave recipients.

These major provisions of Revised Rule 90-29 must guide the preparation of a policy implementing House Bill 403 in order that the employee who surrenders the leave is not held responsible for the tax liability of the surrendered wages.

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Policy Services

Disability Insurance paid for by the employer may be available in some districts for non work related injuries. Given this possibility and the fact that both the federal rule and House Bill 403 require restrictions on the amount of leave that can be surrendered and the amount of leave granted, a reasonable amount of leave should be retained by any possible donor.

Under the employer paid for New Mexico State Disability Insurance plan short term disability payments over a twenty-four (24) week period require a twenty-eight (28) day elimination period while the recipient is unable to work in order to qualify. Long term disability may begin following the short term disability period and continue for a two year period. Districts should determine if they have disability insurance available through employer payment, and if so, should have any potential donor maintain the twenty-eight (28) days needed to cover the elimination period for short term disability.

Even lacking the disability insurance program it would be prudent to require potential staff donors to maintain a similar amount as that required for short term disability, if possible, to cover any personal or family illnesses of an extensive nature. Policy Services would suggest that districts contact their insurance provider to determine what the cost might be to participate in the State of New Mexico Disability Insurance Program. The cost may be comparable to allowing a donated leave policy or unlimited leave accumulation as it relates to future budget obligations. The district should keep in mind that accumulated leave can be quantified into dollars and should be budgeted as an expense item.

House Bill 403, in its major provisions, requires the school district to have policies that:

- Provide for donation of leave in the case of a medical emergency.
- Only a reasonable amount of leave may be donated annually and a minimum amount of leave must be maintained in the donor's account.
- Donations may be limited to donation to employees within an organizational unit.
- The application process must include;
 - A method of soliciting donated leave;
 - Documentation of the identity of the donor and recipient of leave;
 - A certified document by a health care provider that describes the nature, severity and anticipated duration of the emergency medical condition of the recipient, and that includes a statement that the recipient is unable to work all or a portion of the recipients work hours, and
 - Other information the employing agency may reasonably require.

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Policy Services

- Those requesting leave shall first use all annual, sick and personal day leave that the employee has accrued and any compensatory time due prior to receiving donated leave.
- The conversion of the value of the donor's leave based on the donor's hourly rate of pay to hours of leave for the recipient based on the recipient's hourly rate of pay; and
- All unused donated leave shall revert to the donating employees on a prorated basis.

House Bill 403 further provides that if any provision of the bill conflicts with a properly negotiated current collective bargaining agreement, the provisions shall not apply.

House Bill 403 dictates that school district's provide policy that implements statements in the law. In the following recommended policy, regulations and exhibits, Policy Services will include those State law statements as well as the intent of the IRS in their interpretation of how a plan can be implemented so as to shift the taxable burden of the transferred leave to the recipient. Policy Services will follow the express intent of H.B. 403 that the policy be a transfer of annual and sick leave. The IRS does recognize a banked leave policy not spoken to in H.B. 403 but it must be similarly structured to assure compliance with Rule 90-29.

Recommendation

The Policy , **GCCG–Professional / Support Staff Voluntary Transfer of Accrued Annual and Sick Leave** as recommended for adoption has been prepared to meet the needs of each school district, to provide financial stability and to provide guidelines to prevent unnecessary expenses that would affect the budget for educating children. As such, the authorized limit, by policy, on the amounts of leave to be retained by the donor, the amount transferred, and the amount of leave allowed are set in policy. These limits are not specified in the legislation though limits are a requirement of the statute and the IRS rule. Each school district can establish these limits as they see fit. The same holds true for the limit to the contract year for authorized use of the transferred leave. The district may override this limitation to the contract year feature of the policy should they see fit, but must recognize that establishing a limit to the districts financial liability is a prudent practice. Again, the district must use caution since the district is not only providing transferred leave to an employee who will be absent, but the district must also, in most cases, provide payment to the replacement for that person during the absence, an expense which is in addition to the leave. In the case of long term absence this could be a substantial figure not typically budgeted.

House Bill 403 permits but does not require, that donations of leave may be limited to employees within an organizational unit. This was incorporated into the recommended policy to avoid undue pressure on subordinates to donate to supervisory employees. It also avoids the problem of employees with much higher wages soliciting for leave support among hourly wage employees given that the leave payments are converted into hourly wages as

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Policy Services

earned from the donor and are paid in hourly or daily wages as earned by the recipient. Also, limiting donations within organizational units, discourages the soliciting of favor by subordinate employees through donation of leave. This may be particularly important in that the names of the donor and recipient are required and these will be associated in the application process and when leave is returned to donors' prorata when not used.

The application process per House Bill 403 requires documentation of the identity of the donor and recipient of the leave. This may create a privacy issue should the district name the individual in the posting of a request for donations or reveal who the donor is to the recipient. To keep liability to a minimum regarding the recipient, a signed statement allowing the use of the recipients name is included in one of the exhibits. If the district does not reveal the name of the recipient or the donor, if that is possible, then it may be able to drop the limitation based on donations by organizational units or make the limit less constraining. By observation, Policy Services has noted that keeping the names of both donor and recipient private is difficult if at all possible.

One major consideration is that the IRS specifically requires use of their definition of Medical Emergency. The IRS has in multiple letters of interpretation disallowed expansion of this definition. Another part of the recommended policy was that the decision to allow the donation and receipt of the transfer rests with the School District as an employer controlled leave program. This is accomplished through the directions given by the board in policy to the Superintendent for selection of recipients. The IRS has approved the procedure for transfer of leave based on that transfer being by the employee to the employer who then approves the use by an eligible employee as found in the plan. This is primary to shift the tax liability from donor to recipient. The policy provides for this by indicating the eligibility requirements to be considered by a Superintendent appointed committee and placing the final decision with the Superintendent who represents the district.

Below you will find a policy that defines medical emergency, limits the donations, provides for the notice and receipt, and eligibility for donated leave. Regulations are provided specifying the application content and establishing the screening committee. Forms are provided as exhibits for requesting transferring of leave, certification by the health care professional of medical emergency, authorization to disclose health information, and donation of leave.

To assist the district in making the final determination for policy the four following questions should be answered and the results submitted with the adoption of the policy:

What amount of accrued annual leave and sick leave is to be retained in accrual by the donating employee? Annual _____ Sick Leave (or equivalent) _____ or Both _____

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Policy Services

What amount of accrued annual leave and sick leave may be donated by an individual employee? Combined Annual and Sick Leave (or equivalent) to be donated_____

Do you wish to limit donations by organizational unit as suggested? Yes _____ No _____ If no what is your determination: Example professional and support staff to be separate. _____

Do you wish to limit the donations to allow recipient leave to be for the current contract year? Yes _____ No _____ If no what limit will you place on the amount of donated leave for an individual? _____

With the answers to these four (4) questions a date of adoption and the complete name, address, and phone number of the person to whom the request is to be sent, the policy can be personalized to your district's needs and still comply with the requirements of the House bill and IRS rule.

Please note that an asterisk (*) was used in the policy and other documents following lines that may involve the change of the information found in the recommended documents per answers to the above questions.

Cautions related to current negotiated leave policies allowing for Transfer of Leave.

Policy Services has done almost sixty (60) reviews of local school district policies since 2004 and has read or reviewed the negotiated agreements for those districts who had them at the time of review. If the district had a negotiated leave transfer or leave bank policy at the time that was included in the policy manual, it was not copyrighted nor approved by Policy Services. At that time, there were no provisions in New Mexico law for such a policy nor were the financial responsibilities, as found in *Rev. Rule 90-29, 1990-1 C.B. 11* considered. The most noticeable issue in the negotiated agreements reviewed was the tendency to have the decision as to who would receive the leave vested in a committee, not the district or its administrative representative, therefore making it other than a district plan. Another issue found in the negotiated agreements regarding donated leave or a leave bank was that many districts used a leave day as equivalent for any level of employee contrary to the dollar for dollar requirement in the rule. Other issues may also exist.

Policy Services would therefore provide warning that should the Internal Revenue Service review the current policies or negotiated agreements in many of the State of New Mexico School Districts, whether negotiated or employer sponsored, it is likely that they would be determined not to comply with the rule cited and therefore put the leave donors at risk of having to pay the tax requirements on the wages donated.

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Policy Services

Materials of a legal nature in support of this advisory may be found following the text of the Policies below. If you have any questions, or requests call Policy Services at (505) 469-0193 or E-mail Dr. Donn Williams, Policy Services Director at [nmsbapolicy@cox.net].

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Policy Services

Advisory 115

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Policy Services

**PROFESSIONAL / SUPPORT STAFF VOLUNTARY
TRANSFER OF ACCRUED ANNUAL OR SICK LEAVE**

The District recognizes the existence of circumstances under which non-job-related, seriously incapacitating, and extended illnesses and injury may exhaust accrued leave of employees. To provide some measure of relief in such situations, a limited mechanism, based upon voluntary transfer of accrued annual or sick leave, is established. The mechanism will be termed transfer of accrued annual or sick leave for a medical emergency. The definition of a 'medical emergency' will be as follows: A medical condition of the employee or a family member of the employee that will require the prolonged absence of the employee from duty and will result in a substantial loss of income to the employee because the employee will have exhausted all paid leave available apart from the leave-sharing plan.

Limits to Donations:

- The donated leave will be limited to annual leave or sick leave (sick leave will be any paid leave that the district, by policy, allows to be used for that purpose).
- Donations will be limited by organizational structure to prevent undue influence and conflict of interest issues. *
 - Employees who are licensed (certificated) professional educators shall be limited to donating leave for use by those who are licensed (certificated) professional educators.
 - Other employees (support staff) shall be limited to donating leave for use by other support staff.
 - Central office and building level professional staff supervisory personnel may only donate to other professional staff supervisory employees.
- The person donating may only donate already accrued leave up to twenty (20) days and shall maintain in accrued leave at least twenty-eight (28) days of sick leave (or the equivalent) at the time of the donation. *
- Donations will be by accrued days of leave, using either the donor's current daily wages or hourly wages earned for each donated day. The recipient shall receive the the donation converted to the daily wages they currently earn.
- All donations shall be for the current contract year and shall not exceed that period based upon the current contract earnings of the person to whom the donation is made. *

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Policy Services

- All donations shall be on behalf of a specific recipient with the donation made to the district plan for transfer of leave based upon a medical emergency.
- All unused donated leave shall revert to the donating employees on a prorated basis.

Notice and receipt of donations .

- Notice of need for leave donations will be posted by need for licensed professional staff, central office and building level professional supervisory staff, and support staff including the name of the individual. (*)
- Posting will be by placing the notice of need at the central office, and by the mailboxes used for staff members of the district.
- Forms will be provided on which employees may make their donations known to the district office.

Eligibility (for use of transferred leave). The approved applicant shall:

- Be a full-time employee (an employee eligible to earn sick leave).
- Have a "medical emergency" as defined in this policy.
- Have exhausted all earned/accrued leave of any nature or kind including compensatory time and be eligible for an unpaid leave of absence.
- Not be eligible at the time of request for disability benefits, including but not limited to Social Security.
- Be one whose return to duty is projected to occur no later than the beginning of their next contract year. *
- Submit an application, which shall be received by the District office at least ten (10) days prior to the beginning of the applicant's unpaid leave status, when practicable.

Determining eligibility:

- The Superintendent shall appoint an advisory committee consisting of at a minimum, one health education professional, one support staff member, one licensed teacher and one professional supervisory person to review the applications and make a recommendation to the Superintendent.
- The Superintendent shall receive the applications and make the final determination of eligibility using the criterion of eligibility and in consideration of the recommendation of the advisory committee.

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Policy Services

No continuing rights are established by this policy. In compliance with established procedure, the Governing Board reserves the right to modify, change, or delete any policy in accord with its own guidelines. An appeal of the decision of the Superintendent may only be taken using the Staff Grievance Policy GBK.

Adopted: date of manual adoption

LEGAL REF.: To be announced

CROSS REF.: GBK - Staff Grievance
GCC - Professional / Support Staff Leaves and Absences
GDC - Support Staff Leaves and Absences

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Policy Services

REGULATION**REGULATION****PROFESSIONAL / SUPPORT STAFF VOLUNTARY
TRANSFER OF ACCRUED ANNUAL OR SICK LEAVE****(Application Screening)**

The application must be in writing.

The application must be supported by a certified document by a health care provider that describes the nature, severity, and anticipated duration of the emergency medical condition of the recipient and that includes a statement that the recipient is unable to work all or a portion of the recipient's work hours.

The application should be received by the District office prior to the applicant beginning unpaid leave status.

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Policy Services

REGULATION**REGULATION****PROFESSIONAL / SUPPORT STAFF VOLUNTARY
TRANSFER OF ACCRUED ANNUAL OR SICK LEAVE****(Application Screening Committee)**

A committee consisting of at a minimum one health education professional, one licensed teacher, one support staff member, and one professional supervisory person as appointed by the Superintendent are to review the applications and make a recommendation to the Superintendent who will approve or deny the leave. The applications are to be reviewed in accord with the guidelines found in policy and as presented below:

The approved applicant shall:

- Be a full-time employee (an employee eligible to earn sick leave).
- Have a "medical emergency" as defined in this policy.
- Have exhausted all earned/accrued leave of any nature or kind including compensatory time and be eligible for an unpaid leave of absence.
- Not be eligible for disability benefits, including but not limited to Social Security.
- Be one whose return to duty is projected to occur no later than the beginning of their next contract year. *
- Submit an application, which shall be received by the District office at least ten (10) days prior to the beginning of the applicant's unpaid leave status, when practicable.

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Policy Services

EXHIBIT

EXHIBIT

**PROFESSIONAL / SUPPORT STAFF VOLUNTARY
TRANSFER OF ACCRUED ANNUAL OR SICK LEAVE**

TRANSFER OF LEAVE REQUEST FORM

Name _____

Date of Application _____

Mailing Address				
Street or Box Number		City	State	Zip

() _____
Home Phone Number Work Location Job Title

Submit this request form to the Superintendent of Schools at least ten (10) days before the leave is to commence, when practicable. Use of the transferred leave counts towards FMLA leave used by employees.

For determination of eligibility, please answer each of the following questions. Put an ex (x) in the appropriate response column.

YES NO

- ☐ ☐ Is this your first claim for this particular condition?
- ☐ ☐ Have you exhausted all earned/accrued leave of any nature or kind including compensatory time?
- ☐ ☐ Have you attached to this application a signed STATEMENT OF A HEALTH CARE PROFESSIONAL verifying this condition?

By my signature below I give permission to the district to use my name and employment information in requesting transfer of leave donations.

In addition to the statement provided by my health care professional, I also agree to submit to an examination by a health care provider of the School Board's choice, if requested to do so, at the school district's expense.

Employee Signature

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Policy Services

Administrator Signature if Employee unable to sign

DATES OF TRANSFERRED LEAVE REQUESTED

I request leave from _____ to _____

I request a reduced schedule on the following dates _____

I request intermittent leave according to the following schedule _____

The total number of days of Transferred Leave that I request is _____

EMPLOYEE STATEMENT

I agree to return to work on _____. If circumstances change such that I will not be able to return to work on that date, I agree to notify my supervisor within two days with updated leave information and will submit an updated health care professional's statement to the Leave Administrator.

Signature _____ Date _____

TO BE COMPLETED BY THE TRANSFER LEAVE ADMINISTRATOR

Prior transfer leave request confirmed by date _____

Leave is ☐ Approved ☐ Denied for the following reason(s): _____

Administrator Signature Date

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Policy Services

EXHIBIT

EXHIBIT

**PROFESSIONAL / SUPPORT STAFF VOLUNTARY
TRANSFER OF ACCRUED ANNUAL OR SICK LEAVE**

EMPLOYEE TRANSFER LEAVE PROGRAM STATEMENT OF HEALTH CARE PROFESSIONAL

After completing this form, please send to:

Name of Patient	Last	First	MI
-----------------	------	-------	----

If the patient is not an employee of the District above
what is the relationship to the employee _____

Please answer the following questions (attach additional pages if necessary):

1. Describe the nature of the illness/injury (diagnosis) _____
2. State the approximate date the illness/injury commenced, and the probable duration of the illness/injury (and also the probable duration of the patient's present incapacity, if different).

3. Will it be necessary for the patient to be on an intermittent or a less than full schedule as a result of the illness/injury (including for treatment described in item 6 below)?

Yes _____

No _____

If yes, give the estimated date of return to full-time work or a normal schedule. _____

4. If the patient will be absent from a full schedule because of treatment of the illness/injury on an intermittent or part-time basis, provide an estimate of the

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Policy Services

probable number of and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery, if any.

5. If any of these treatments will be provided by another provider of health services (e.g. physical therapist), please state the nature of the treatments. _____

6. Is it necessary for the patient to be absent from work for treatment?

Yes _____ No _____

7. What is the date you first required the patient to begin treatment for the illness or injury? _____

This is to certify that this patient has suffered a medical condition that will require the patient to take a prolonged absence from performing his/her normal duties or in the alternative requires a family member of the patient as care taker to take a prolonged absence from their duties to assist in the care of the patient during treatment and recovery.

Health Care Provider Signature

Name (please print)

Date

Street or Box Address

City

State

ZIP

Telephone Number

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Policy Services

EXHIBIT

EXHIBIT

**PROFESSIONAL / SUPPORT STAFF VOLUNTARY
TRANSFER OF ACCRUED ANNUAL OR SICK LEAVE**

AUTHORIZATION TO DISCLOSE HEALTH INFORMATION

Name of Patient	Last	First	MI
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I authorize the use or disclosure of the above individual's health information as described in this form.

The following Physician or Physician's office is authorized to make the disclosure.

Address _____

Specifically describe the illness or injury to be used or disclosed.

This information may be disclosed to and used by the following individual or organization for the purpose of providing leave transfer:

School District *

I understand that I have a right to revoke this authorization at any time. I understand that if I revoke this authorization, I must do so in writing and present my written revocation to:

School District Superintendent *

I understand that the revocation will not apply to information that has already been released in response to this authorization.

Unless otherwise revoked, this authorization will expire on the following date _____
 event _____ condition _____

If no expiration date, event or condition is specified, this authorization will expire in six months.

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Policy Services

I understand that authorizing the disclosure of this health information is voluntary. I can refuse to sign this authorization. I understand that I may inspect or copy the information to be used or disclosed. If I have questions about disclosure of my health information, I can contact the Superintendent of Schools.

Signature of Employee

Date

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

Policy Services

EXHIBIT

EXHIBIT

**PROFESSIONAL / SUPPORT STAFF VOLUNTARY
TRANSFER OF ACCRUED ANNUAL OR SICK LEAVE**

Request to donate annual or sick leave

Name _____

Date of Application _____

Mailing Address				
	Street or Box Number	City	State	Zip

() _____
Home Phone Number Work Location Job Title

I request that annual or sick leave be transferred to the leave account of an approved leave recipient (name if applicable) [] under the Transfer of Annual or Sick Leave Policy of this District.

As of the date indicated below I have enough leave accrued to my account to cover the transfer request in accord with the requirements of the District Policy. The amount of annual and sick leave I am transferring also does not reduce my accrued leave below that allowed by policy.

I understand that my decision to transfer leave is not revocable. If a sufficient balance of unused leave remains after the recipient's medical emergency has terminated, I will have a pro-rated share returned to me during either the current leave year or the following leave year.

I have not been directly or indirectly intimidated, threatened or coerce, or promised any benefit by any employee for the purpose of donating or using leave.

Conditions and Limitations to Donations:

- The donated leave will be limited to annual leave or sick leave (sick leave will be any paid leave that the district, by policy, allows to be used for that purpose).
- Donations will be limited by organizational structure and to prevent undue influence and conflict of interest issues. *

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Policy Services

- Employees who are licensed (certificated) professional educators shall be limited to donating leave for use by those who are licensed (certificated) professional educators.
- Other employees (support staff) shall be limited to donating leave for use by other support staff.
- Central office and building level professional staff supervisory personnel may only donate to other professional staff supervisory employees.
- The person donating may only donate already accrued leave and shall maintain in accrued leave at least twenty-eight (28) days of annual/sick leave (or the equivalent) at the time of the donation. *
- Donations will be by accrued days of leave, using either the donor's current daily wages or hourly wages earned for each donated day. The recipient shall receive the the donation converted to the daily wages they currently earn.
- All donations shall be for the then current contract year and shall not exceed that period based upon the current contract earnings of the person to whom the donation is made. *
- All donations shall be on behalf of a specific recipient with the donation made to the district plan for transfer of leave based upon a medical emergency.
- All unused donated leave shall revert to the donating employees on a prorated basis.

Signature of Employee

Date

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Policy Services

RELEVANT SUPPORT MATERIALS

REVENUE RULE 90-29

1990-1 C.B. 11, 1990-15 I.R.B. 5.

Internal Revenue Service
Revenue Ruling

AMOUNTS PAID BY AN EMPLOYER PURSUANT TO A LEAVE-SHARING PLAN

Published: April 9, 1990

Section 61. - Gross Income Defined, 26 CFR 1.61-2: Compensation for services, including fees commissions, and similar items.

Amounts paid by an employer pursuant to a leave-sharing plan. Amounts paid by an employer pursuant to a leave-sharing plan are includible in the gross income of the recipient as compensation for services provided by the recipient to the employer and are wages for employment tax purposes.

ISSUE

What are the federal income tax consequences to employees under the leave-sharing plan described below?

FACTS

An employer established a plan whereby its employees who suffer 'medical emergencies' may qualify as recipients of leave surrendered to the employer by other employees or leave deposited by its employees in an employer-sponsored leave bank. A 'medical emergency' is defined under the plan as a medical condition of the employee or a family member of the employee that will require the prolonged absence of the employee from duty and will result in a substantial loss of income to the employee because the employee will have exhausted all paid leave available apart from the leave-sharing plan. Under the provisions of the plan, a written application describing the medical emergency must be submitted to the employer by or on behalf of the employee requesting additional paid leave under the

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Policy Services

leave-sharing plan. After the application has been approved and the employee has exhausted all of his or her paid leave, the employee is eligible to receive additional paid leave (to be paid at his or her normal rate of compensation) with respect to leave surrendered to the employer or leave deposited in the leave bank. The plan contains restrictions on the amount of leave that may be surrendered to the employer or deposited in the leave bank and also contains rules as to the manner in which surrendered or deposited leave will be granted to eligible leave recipients.

HOLDING

The amounts paid by the employer to a leave recipient pursuant to the plan are includible in the gross income of the recipient under section 61 of the Code as compensation for services provided by that recipient to the employer. These amounts are considered 'wages' for purposes of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, the Railroad Retirement Tax Act, the Railroad Unemployment Repayment Tax, and income tax withholding, unless excluded therefrom under a specific provision of the Code. An employee who surrenders leave to the employer or deposits leave in the leave bank does not realize any income and incurs no deductible expense or loss either upon the surrender or deposit of the leave or its use by the recipient. The holding and underlying rationale of this ruling apply only to bona fide employer-sponsored leave-sharing arrangements.

DRAFTING INFORMATION

The principal author of this revenue ruling is P. Val Strehlow of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Strehlow on (202) 377-9586 (not a toll-free call).

Rev. Rul. 90-29, 1990-1 C.B. 11, 1990-15 I.R.B. 5.

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Policy Services

Internal Revenue Service

Number: **200720017**

Release Date: 5/18/2007

Department of the Treasury

Washington, DC 20224

Dear

:

This is in response to your request for a private letter ruling dated November 6, 2006, submitted by the authorized representatives of Taxpayer. Rulings are requested below concerning Taxpayer's income tax withholding and employment tax obligations with respect to leave transferred by employees of Taxpayer to other employees of Taxpayer under the Policy currently maintained by Taxpayer. Similar rulings are also requested concerning leave transferred pursuant to the Modified Policy currently being considered by Taxpayer for implementation.

FACTS

Taxpayer is a publicly traded healthcare services company with facilities in numerous states. Taxpayer's accounting period is the calendar year, and it uses the accrual method of accounting for maintaining its books and records and for filing its federal tax returns. Taxpayer's corporate headquarters is in State A.

Taxpayer maintains various programs under which its employees accrue paid leave time that may be used for various reasons, including vacation, personal days and sick days. Employee requests for time off must request be approved by Taxpayer. If a request is approved, but the employee lacks sufficient hours of paid leave time under the applicable paid leave program at the time leave is to begin, the employee will not receive pay for the time off.

Taxpayer currently maintains Policy pursuant to which employees are allowed to surrender accrued hours of paid leave ("Donor Employee") for the benefit of other employees who need more time off than they have accumulated personally ("Recipient Employee"). Under Policy as currently in effect, an eligible employee may request additional paid leave if the employee experiences a medical emergency, is caring for a spouse or child in the event of a medical emergency, or needs extended time off following the death of a parent, spouse or child. To be eligible to receive surrendered leave under Policy, an employee must be employed by Taxpayer for at least 90 days and must be eligible to accrue paid leave time under the applicable paid leave program. Policy defines "medical emergency" as a major

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Policy Services

illness or other medical condition (e.g., heart attack, cancer, etc) that requires a prolonged absence from work, including intermittent absences that are related to the same illness or condition.

In order to receive surrendered paid leave time, an eligible employee must have exhausted all of his or her own paid leave time, must complete a written request and authorization form, and must have the scheduled time off or leave of absence approved by Taxpayer. The Donor Employee also must complete an authorization form, which must be approved by Taxpayer, before leave can be surrendered. Leave time must be donated to a specific employee who is eligible to receive donated leave time under the Policy (*i.e.*, the Recipient Employee). Policy also includes restrictions on the amount and type of paid leave time that may be surrendered by a Donor Employee. Once surrendered, paid leave hours cannot be returned to the Donor Employee, but will remain available for use by the specific Recipient Employee.

If a Recipient Employee receives paid leave hours under the Policy from a Donor Employee with a different pay rate, the leave time is converted based on the Recipient Employee's pay rate, so that the dollar value of the surrendered leave remains the same, but leave taken by the Recipient Employee is always paid at the Recipient Employee's regular rate of pay. For example, if Donor Employee is regularly paid

\$15.00 per hour and surrenders eight hours of paid leave to a Recipient Employee who is regularly paid \$10.00 per hour, the Recipient Employee will receive 12 hours of paid leave, paid at \$10.00 per hour (8 hours x \$15.00 = \$120 value, and \$120.00 value/

\$10.00 per hour = 12 hours).

Taxpayer is considering whether to implement certain modifications to Policy ("Modified Policy") that would allow eligible employees who experience "catastrophic casualty losses" due to terrorist attack, fire or other natural disaster (*i.e.*, hurricane, flood, tornado or other highly destructive storm) to request surrendered paid time off as well. For

purposes of the Modified Policy, a "catastrophic casualty loss" would include severe damage to or destruction of the employee's primary residence, which requires immediate action by the employee to secure the premises. The Modified Policy may permit employees to donate leave hours to a leave "bank" in the event of a terrorist attack, natural disaster or public health crisis that affects a large number of employees. Leave hours donated to the bank would be available on a first-come, first-served basis, to affected employees whose leave donation requests are approved. The leave bank would be available only for a limited period of time following the crisis event.

Taxpayer is requesting the following four rulings:

(1)

Payments made under the Policy as currently in effect are reportable in the Recipient Employee's gross income under § 61 of the Internal Revenue Code (the "Code") and are

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Policy Services

subject to withholding taxes under §§ 3401, 3121 and 3306 of the Code at the time the Recipient Employee receives the payment.

Under the Policy as currently in effect, the Recipient Employee who receives the payments with respect to the paid leave time surrendered by the Donor Employee is the sole individual subject to withholding and income tax liability at the time the payment is made, and the Donor Employee who surrendered the paid time off is not subject to income or withholding tax liability, either at the time he or she applies to donate the leave hours or at the time a payment is made by Taxpayer to the Recipient Employee in connection with the surrendered paid leave time.

Payments made under the Modified Policy after implementation of the proposed changes to the Policy are made are reportable in the Recipient Employee's gross income under § 61 and are subject to withholding taxes under §§ 3401, 3121 and 3306 at the time the Recipient Employee receives the payment.

Under the Modified Policy, the Recipient Employee who receives the payments with respect to the paid leave time surrendered by the Donor Employee is the sole individual subject to withholding and income tax liability at the time the payment is made, and the Donor Employee who surrendered the paid time off is not subject to income or withholding tax liability, either at the time he or she applies to donate the leave hours or at the time a payment is made by Taxpayer to the Recipient Employee in connection with the surrendered paid leave time.

(2)

(3)

(4)

LAW AND ANALYSIS -- GROSS INCOME ISSUE

Section 61 of the Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived, including compensation for services.

A basic principle of tax law is that a taxpayer's assignment to another person of his or her right to receive compensation for personal services does not relieve the taxpayer of the tax liability on the assigned income. See Lucas v. Earl, 281 U.S. 111, 50 S. Ct. 241,

74 L. Ed. 731 (1930), and Helvering v. Eubank, 311 U.S. 122, 61 S. Ct. 149, 85 L. Ed.

81, 1940-2 C.B. 209 (1940), 1940-2 C.B. 209. However, this general "assignment of income" rule does not apply to certain situations involving employer-sponsored leave plans. One situation involves bona fide employer-sponsored (medical) leave-sharing arrangements. Another involves certain qualified employer-sponsored major disaster leave-sharing plans.

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The first exception to this general assignment of income rule involves the bona fide employer-sponsored (medical) leave-sharing arrangement described in Rev. Rul. 90-29, 1990-1 C.B. 11. Under the plan in the ruling, employees who suffer medical emergencies may qualify to receive leave surrendered to the employer by other employees or leave deposited by its employees in an employer sponsored leave bank. The ruling holds that the amounts paid by the employer to a leave recipient pursuant to the plan are includable in the gross income of the recipient under § 61 of the Code as compensation for services provided by that recipient to the employer. Rev. Rul. 90-29 further concludes that these amounts are considered “wages” for employment tax purposes, including the Federal Insurance Contributions Act (“FICA”), the Federal Unemployment Tax Act (“FUTA”), the Railroad Retirement Tax Act (“RRTA”), and the Railroad Unemployment Repayment Tax (“RURT”), and for income tax withholding purposes, unless otherwise excluded by a specific provision of the Code. The revenue ruling also holds that an employee who surrenders leave to the employer or deposits leave in the leave bank does not realize any income and incurs no deductible expense or loss either upon surrender or deposit of the leave or its use by the recipient employee.

Another exception involves qualified employer-sponsored major disaster leave-sharing plans such as plans that involve amounts paid pursuant to a leave-sharing plan to assist employees affected by a major disaster declared by the President of the United States. Notice 2006-59, 2006-28 I.R.B. 60, provides that the Internal Revenue Service will not assert that a leave donor who deposits leave into an employer-sponsored leave bank under a major disaster leave-sharing plan that meets the requirements set forth in Notice 2006-59 realizes income or has wages, compensation, or rail wages with respect to the deposited leave, provided that the plan treats payments made by the employer to the leave recipient as “wages” for purposes of FICA, FUTA, and income tax withholding, and as “compensation” for purposes of RRTA and “rail wages” for purposes of RURT, unless excluded therefrom under a specific provision of the Code. A leave donor may not claim an expense, charitable contribution, or loss deduction on account of the deposit of the leave or its use by a leave recipient. Notice 2006-59 defines “major disaster” to mean (a) a major disaster as declared by the President under § 401 of the Stafford Act, 42 U.S.C. § 5170, that warrants individual assistance or individual and public assistance from the federal government under that Act, or (b) a major disaster or emergency as declared by the President pursuant to 5 U.S.C. § 6391, in the case of employees described in that statute.

In this case, Recipient Employees under the Policy as currently in effect are limited to those employees who experience a medical emergency, care for a spouse or child in the event of a medical emergency, or need extended time off following the death of a parent, spouse or child. The Policy defines “medical emergency” as a major illness or other medical condition (e.g., heart attack, cancer, etc) that requires a prolonged absence from work, including intermittent absences that are related to the same illness or condition. The facts surrounding Policy as currently in effect in this case are close to the facts surrounding the employer-sponsored (medical) leave-sharing arrangement described in Rev. Rul. 90-29. We therefore conclude that, under the facts presented and the representations made, the

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Policy Services

payments made under the Policy as currently in effect are includible in the Recipient Employee's gross income under § 61 of the Code. Such payments are not includable in the Donor Employee's gross income under § 61.

However, Modified Policy with the changes proposed above is distinguishable from the narrow exceptions described above. Because Modified Policy provides a Recipient Employee with paid leave during a time that he or she is facing a catastrophic casualty loss that may or may not involve a personal or family medical emergency, Modified Policy is not limited to a medical emergency leave program. Consequently, it is not within the scope of employer-sponsored (medical) leave-sharing arrangement described in Rev. Rul. 90-29. Modified Policy is also outside the scope of qualified employer-sponsored major disaster leave-sharing plans that meet the requirements of Notice 2006-59 because it is not designed to be limited specifically to aid the victims of a "major disaster" as declared by the President of the United States.

Because the Modified Policy does not meet any of the exceptions described above, the tax consequences to Donor Employees who transfer leave pursuant to the Modified Policy will be governed by the assignment of income doctrine. Applying the doctrine to the facts here, we conclude that a Donor Employee's assignment of his or her right to receive vacation and other similar accrued paid leave under the Modified Policy will not relieve the Donor Employee of the income tax liability on the assigned leave. Therefore, a Donor Employee must include the cash value of any vacation and other similar accrued paid leave that the Donor Employee transfers pursuant to the Modified Policy in his or her gross income under § 61 as compensation for services provided by that employee to Taxpayer.

LAW AND ANALYSIS -- EMPLOYMENT TAX ISSUE

Generally, every employer making payment of "wages" must withhold federal income tax pursuant to § 3402 of the Code. For income tax withholding purposes, the term "wages" means all remuneration for services performed by an employee for his employer unless a specific exemption under § 3401(a) applies. In general, income tax is withheld from an employee's wages when the wages are actually or constructively paid to the employee. See Treas. Reg. § 31.3402(a)-1. Federal Insurance Contribution Act (FICA) taxes are imposed on employees and employers under §§ 3101 and 3111, respectively. Employers have a duty to collect the employee's share of FICA taxes under § 3101 by withholding the amount of the tax from the employee's "wages." The term "wages" for purposes of FICA means, with certain exceptions, all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash. See § 3121(a). Typically, wages are subject to FICA tax when they are actually or constructively paid to the employee. See Treas. Reg. § 31.3121(a)-2. Additionally, the employer must pay an excise tax (FUTA tax) on the total "wages" the employer pays to an employee. The term "wages" for purposes of FUTA is similar to the FICA wage definition. See § 3306(b). Again, FUTA taxes are imposed when an employee is actually or constructively paid. See Treas. Reg. §§ 31.3301-2, 31.3301-3(b) and 31.3301-4.

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As noted above, the amounts an employer pays to an employee who receives paid leave pursuant to a bona fide employer sponsored (medical) leave-sharing plan, like the one in Rev. Rul. 90-29, are includible in that employee's gross income under § 61 of the Code, and they are considered "wages" of that employee for employment tax purposes (unless otherwise excluded by the Code). Moreover, pursuant to Rev. Rul. 90-29, an employee who surrenders leave to the employer or deposits leave into a leave bank maintained by the employer does not realize any income.

Because the Policy in this case is a bona fide employer sponsored (medical) leave-sharing plan similar to the one described in Rev. Rul. 90-29, we conclude that the payments made by Taxpayer to a Recipient Employee with respect to the paid leave time surrendered by the Donor Employee under the Policy are includable in the Recipient Employee's gross income under § 61 of the Code, and that they should be treated as "wages" of the Recipient Employee for employment tax purposes.

Therefore, such payments made by Taxpayer to the Recipient Employee are subject to the tax withholding requirements and taxes provided by §§ 3402, 3101, 3102, 3111, 3121, and § 3301, respectively, at the time of payment.

Moreover, in accordance with Rev. Rul. 90-29, the Donor Employee who surrenders leave under the Policy does not have income under § 61 of the Code, and thus is not treated as the recipient of "wages" subject to employment taxes in connection with the surrendered leave. The Donor Employee therefore is not subject to any withholding or employment tax obligations relating to the payments.

However, the Modified Policy, as proposed, does not qualify as a bona fide (medical) leave-sharing plan or a qualified major disaster leave-sharing plan. Therefore, the cash value of the surrendered paid leave is includable in the Donor Employee's gross income under § 61 of the Code, and thus should also be treated as the "wages" of the Donor Employee for employment tax purposes. Accordingly, these wages are subject to the tax withholding requirements and taxes provided by §§ 3402, 3101, 3102, 3111, 3121, and § 3301, respectively.

In addition, the Recipient Employee who receives payments of surrendered paid leave under the Modified Policy is not treated as the recipient of "wages" subject to employment tax. The Recipient Employee is not subject to any withholding or employment tax obligations relating to the payments.

However, with respect to whether the Recipient Employee has gross income under § 61 of the Code for reasons other than compensation for services provided to Taxpayer, we note that under section 4.02(1) of Rev. Proc. 2006-3, 2006-1 I.R.B. 122, 129, the Service ordinarily will not issue letter rulings on any matter in which the determination is primarily one of fact.

Because the reasons that Donor Employees of Taxpayer may transfer paid leave under the Modified Policy is primarily one of fact, we cannot express an opinion regarding the federal

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Policy Services

income tax consequences of the subject payments to the Recipient Employees who receive the cash value of the surrendered paid leave under the Modified Policy.

HOLDINGS

We hold that payments with respect to surrendered paid leave under the Policy, as currently in effect, made to a Recipient Employee are includable in the Recipient Employee's gross income under § 61 of the Code and are "wages" subject to withholding taxes under §§ 3401, 3121 and 3306 at the time the Recipient Employee receives the payment. Moreover, the Recipient Employee who receives the payments with respect to the surrendered paid leave is the sole individual subject to withholding and income tax liability at the time the payment is made. The Donor Employee who surrendered the paid leave is not subject to income tax liability or withholding tax liability, either at the time he or she applies to donate the leave hours or at the time a payment is made by Taxpayer to the Recipient Employee in connection with the surrendered paid leave time.

We further hold that payments with respect to surrendered paid leave under the Modified Policy, after the implementation of the changes contemplated by Taxpayer, are includible in the Donor Employee's gross income under § 61 of the Code and are "wages" subject to withholding taxes under §§ 3401, 3121 and 3306. The Donor Employee is the sole individual subject to wage withholding tax liability at the time the payment is made.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

We express no opinion, except as specifically ruled above, as to the federal income tax treatment of the transaction under any other provisions of the Code and regulations that may be applicable or under any other general principles of federal income taxation.

Neither is any opinion expressed as to the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction(s) that are not specifically covered by the above ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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Policy Services

Sincerely yours,

William A. Jackson Branch Chief, Branch 5

Office of Associate Chief Counsel (Income Tax & Accounting)

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Policy Services

House Bill 403

AN ACT

RELATING TO PUBLIC EMPLOYEES; PROVIDING FOR PUBLIC EMPLOYERS TO IMPLEMENT A LEAVE DONATION POLICY FOR EMPLOYEES WITH MEDICAL EMERGENCIES.

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

SECTION 1. LEAVE DONATION POLICY.--

A. State agencies, political subdivisions and school districts shall implement policies that provide for employees who earn annual or sick leave the opportunity to donate annual or sick leave to another employee for a medical emergency. The policy shall provide:

(1) that a reasonable amount of leave may be donated by an employee annually and that each employee shall maintain a certain minimum amount of leave before making a donation of leave in excess of that amount;

(2) that the donation may be limited to a donation between employees within an organizational unit;

(3) for an application process for donated leave that includes:

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(a) a method of soliciting donated leave;

(b) documentation of the identity of the donor and recipient of leave;

(c) a certified document by a health care provider that describes the nature, severity and anticipated duration of the emergency medical condition of the recipient and that includes a statement that the recipient is unable to work all or a portion of the recipient's work hours; and

(d) other information that the employing agency may reasonably require;

(4) that an employee who wishes to request donated leave shall first use all annual, sick and personal day leave that the employee has accrued and any compensatory time due prior to receiving donated leave;

(5) for conversion of the value of the donor's donated leave based on the donor's hourly rate of pay to hours of leave for the recipient based on the recipient's hourly rate of pay; and

(6) that unused donated leave at the end of a medical emergency or when no longer needed shall revert to the donating employees on a prorated basis.

B. To the extent any provision of this section conflicts with a current collective bargaining agreement negotiated pursuant to the Public Employee Bargaining Act, the

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provisions of this section shall not apply. _____

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HB 403

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Policy Services

Site location for the information on **State of New Mexico Disability Insurance:**

https://www.mybenefitsnm.com/Documents/Disability_Policy_July_2013_Final_1.PDF

Please contact your insurance provider to determine if your district has or is eligible to participate in the Disability Insurance program.

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Policy Services

POLICY SERVICES

ADVISORY

Volume 12, Number 1

August 2015

CONTENTS

Policy Advisory No. 113 ----- EFE – Competitive Food Sales/Vending Machines

Policy Advisory Discussion

Policy Advisory No. 113. EFE — Competitive Food Sales/Vending Machines. Policy Services was recently made aware that the New Mexico Public Education Department modified New Mexico Administrative Code 6.12.5 and 6.12.6 to conform to Federal law, rule and guidance limitations regarding beverages and foods sold in schools.

The changes to 6.12.5.8 NMAC removed some New Mexico State requirements, deferring to the Federal law, rule and guidance limitations regarding beverages and food sold in schools, and established New Mexico limitations on the frequency of exempt sale of food and/or beverages for school related fundraisers. Most of the changes caused modification to Policy EFE, however, 6.12.5.8 NMAC also incorporated these changes into the annual assurances required by 6.12.6 NMAC to the New Mexico Public Education Department (PED) to be reviewed in conjunction with the administrative review of the school food authority. This is important to note in that there are several important changes made in the Code of Federal Regulations related to nutrition standards for food served under the National School Lunch Act and the Child Nutrition Act. Though not specifically included in a policy or procedure, these nutrition standards are to be followed by the school districts and the school food authority.

The changes to EFE, Competitive Food Sales / Vending Machines, were specifically to the beverages allowed to be sold as competitive food or accompaniment to the food program. The changes were substantive in nature and show up clearly as marked in the policy, found below. Additionally, the New Mexico Public Education

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Policy Services

Department placed the limits as follows on the exempt sale of food and/or beverages for school related fundraisers: No fundraiser may be conducted in competition with school meals in the food service area during meal service. A fundraiser may be conducted only for up to one school day on two occasions per semester or trimester term in a school that participates in United States department of agriculture school meal programs. Please note, if schools do not follow this requirement they may be in violation of Federal laws and rules. Schools are responsible for keeping records regarding compliance with nutrition standards for all competitive foods available for sale to students in areas under its jurisdiction and outside of the controls of the school food authority responsible for service of reimbursable school meals.

Concern for compliance

Creation of the Wellness Policy as mandated by 6.12.6 NMAC goes far beyond this advisory and the one policy EFE. Below is an excerpt from a 2006 advisory prepared to assist districts submitting their wellness assurances and policies to the Public Education Department (PED). As the New Mexico Administrative Code (NMAC) was written, districts needed to gather more information to be sure of having policy and procedure to direct staff and guide the Health Advisory Council in compliance with the Wellness requirements of 6.12.6 NMAC. Please read the content of the advisory referred to below and also go to Advisories 22, 23, 24, and 35 found on the NMSBA web site "www.nmsba.org" at "Policy" in year "2006" and make sure you have adopted or otherwise taken the appropriate actions to comply with 6.12.6 NMAC.

The materials referred to below are from an advisory sent to districts in 2006 and are for the purpose of providing information to assist in understanding the ramifications of changes to NMAC 6.12.6.8 found following the policy EFE.

“(Policy Advisory No. 31. Student and School Employee Wellness submission to PED.) In 6.12.6.8 NMAC part C PED requires that each school district submit parts of the district wellness policy to the PED for approval by June 30, 2005. Unfortunately this comes too late to meet that deadline but is intended to assist you in making the submission if you have not done so. Before submitting the required information, take a careful look at the requirements. PED has demanded that the schools produce a policy that if constructed in accord with the administrative code would probably be the size of a New York telephone book. The policy manual you have developed in coordination with NM Policy Services has defined policy more succinctly than PED and thus what PED is requesting to be submitted is in several policies, regulations, plans and may even be in more than one curriculum guide. Policy Services recommends that you send a list of the requirements and refer PED personnel to the policy, regulation or other documents as submitted. For example: 6.12.6.8 (C) (1) NMAC requires submission of sections of the wellness policy that are set forth in Paragraphs (3), (4), (5), and (6) of Subsection D and all of Subsection E before June 30, 2006. The following type of submission is recommended, making sure that you have these policies and that they are related to the NMAC Subsections indicated. Should you have developed your own wellness policy, simply substitute the sections you identify as coordinating with the administrative code requirement,

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however, the coding should be the same for the policy. If you wish to provide more information or provide excerpts from the policies, that may be a good choice also. The following is an example of the format suggested for submitting the materials and requires that each district print and include the materials indicated:

Wellness Policy and Procedures by NMAC for _____

6.12.6.8 (D)(3) See attached Regulation JL-RB on Student Wellness and note the Physical Activity Goals.

6.12.6.8 (D)(4) See attached Policy EFE on Competitive Food Sales/Vending Machines and note the Competitive Food Sales section first two paragraphs.

6.12.6.8 (D)(5) See attached Policies JJE on Student Fund Raising Activities and EFE Competitive Food Sales/Vending Machines and note the Competitive Food Sales section regarding school sponsored fund raising in the last paragraph.

6.12.6.8 (D)(6) See attached Policies JJB Student Social Events, JJA Student Organizations, JJIB Interscholastic Sports, Extra Curricular Activity Eligibility and JLD Guidance and Counseling (you may also want to write an overview of how sports, counseling, social events and involvement in governance and other activities are a part of a plan to improve the social and emotional well being of the student's in the educational process).

6.12.6.8 (E) See attached Policy JL Student Wellness specifically paragraph four to the end of the policy.

For the next submission, guidance will be forthcoming on complying with the January 12, 2007 requirements but in the meantime your district should be developing Health Education and Physical Education curricula aligned with content standards, school safety plans including policy and regulation EC, health service plans including policies JLC, JLCA, JLCB, JLCC, JLCCA, and JLCD, and a staff wellness plan including policies AC, GBA, GBGC, GBGCA, and KEB. Last, you may want to expand on the subsection designated program evaluation in JL-RB in order to meet the requirements of 6.12.6.8 (D)(10). Most of the information you need is found in these policies but the requirements call for plans in several cases, not just policy.

If you have difficulty with PED accepting the suggestions above for the June time period please call and discuss their concerns with Policy Services staff. We may be able to assist you with compliance if we are given a better understanding of the approval process."

Materials of a legal nature in support of this advisory may be found following the text of the Policies below. If you have any questions, or requests call Policy Services at (505) 469-0193 or E-mail Dr. Donn Williams, Policy Services Director [nmsbapolicy@cox.net].

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COMPETITIVE FOOD SALES / VENDING MACHINES

Vending Machines

Vending machines will only dispense foods that meet nutrition standard guidelines as set forth by the U.S. Department of Agriculture requirements for foods and beverages that are sold individually and ~~the New Mexico~~ requirements for competitive foods sold to students. The requirements for vending machine beverage sales and accompaniments in New Mexico schools are listed by designated school location of the sale.

- *Elementary schools.* Allowable beverages for elementary school-aged students are limited to: ~~Milk (two percent [2%] or less), soy milk, and water only may be sold or dispensed from vending machines and then only after the last lunch period is completed.~~ only may be sold or dispensed from vending machines and then only after the last lunch period is completed.
 - Plain water or plain carbonated water (no size limit);
 - Low fat milk, unflavored (no more than 8 fluid ounces);
 - Non fat milk, flavored or unflavored (no more than 8 fluid ounces);
 - Nutritionally equivalent milk alternatives as permitted in § 210.10 and § 220.8 of this chapter (no more than 8 fluid ounces); and
 - 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 8 fluid ounces).
- *Middle schools.* Allowable beverages for middle school-aged students are limited to: ~~No carbonated beverages and only drinks and food specified by 6.12.5.8 NMAC may be sold or dispensed from vending machines. Foods from vending machines may only be sold after the last lunch period.~~ only may be sold or dispensed from vending machines and then only after the last lunch period is completed.
 - Plain water or plain carbonated water (no size limit);
 - Low fat milk, unflavored (no more than 12 fluid ounces);
 - Non fat milk, flavored or unflavored (no more than 12 fluid ounces);
 - Nutritionally equivalent milk alternatives as permitted in § 210.10 and § 220.8 of this chapter (no more than 12 fluid ounces); and

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- 00 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 12 fluid ounces).
- *High schools.* Allowable beverages for high school-aged students are limited to: ~~selling beverages from vending machines: Beverages sold from vending machines must conform to 6.12.5.8 NMAC as to nutritional value and if sold after the last lunch period is completed may include the following: carbonated sugar free and caffeine free soft drinks, non-carbonated flavored water without added sweeteners, and sport drinks. only may be sold or dispensed from vending machines and then only after the last lunch period is completed.~~
 - Plain water or plain carbonated water (no size limit);
 - Low fat milk, unflavored (no more than 12 fluid ounces);
 - Non fat milk, flavored or unflavored (no more than 12 fluid ounces);
 - Nutritionally equivalent milk alternatives as permitted in § 210.10 and § 220.8 of this chapter (no more than 12 fluid ounces);
 - 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 12 fluid ounces);
 - Calorie-free, flavored water, with or without carbonation (no more than 20 fluid ounces);
 - Other beverages that are labeled to contain less than 5 calories per 8 fluid ounces, or less than or equal to 10 calories per 20 fluid ounces (no more than 20 fluid ounces); and
 - Other beverages that are labeled to contain no more than 40 calories per 8 fluid ounces or 60 calories per 12 fluid ounces (no more than 12 fluid ounces).
- *High schools selling food products by vending machine:* Food products shall conform to ~~6.12.5.8 NMAC~~ 7 CFR 210.11 as to nutritional value if sold from vending machines to students and may be sold at any time.

Competitive Food Sales

Competitive food sales and marketing will be consistent with nutrition education and health promotion. Competitive food and beverage items sold during the school day must meet the nutrition standards for competitive food as required in 7 CFR 210.11 and 210.11a.

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The á la carte offerings in school meal programs shall follow the nutritional minimum requirements for reimbursable school meals as issued by the Secretary of Agriculture in The National School Lunch Act and The Child Nutrition Act (see references below).

Fundraiser restrictions.

A special exemption is allowed for the sale of food and/or beverages that do not meet the competitive food standards as required in this section for the purpose of conducting an infrequent school-sponsored fundraiser. In school sponsored fund raisers, before, during and after school, healthy choices conforming to the requirements for high schools in food and beverage sales found in 6.12.5.8 NMAC shall be followed in at least fifty (50) percent of the offerings for sale. A fundraiser is a sale on a school campus to benefit a school or school organization of beverage or food products limited by a United States department of agriculture school meal program for use, consumption or sale during the school day. No fundraiser may be conducted in competition with school meals in the food service area during meal service. A fundraiser may be conducted only for up to one school day on two occasions per semester or trimester term in a school that participates in United States department of agriculture school meal programs.

Adopted: date of manual adoption

LEGAL REF.: 42 U. S. C. 1751 *et seq.*, The National School Lunch Act
42 U.S.C. 1771 *et seq.*, The Child Nutrition Act as amended.
7 CFR 210.11 Competitive food service and standards
7 CFR 210.11a **Competitive food services**
6.12.5.8 NMAC, New Mexico Requirements for Competitive
Foods Sold to Students
6.12.6.8 NMAC, Wellness Requirements

CROSS REF.: JL - Student Wellness

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RELEVANT SUPPORT MATERIALS

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 5 NUTRITION: IMPLEMENTATION OF FEDERAL REQUIREMENTS FOR
COMPETITIVE FOODS

6.12.5.1 ISSUING AGENCY: Public Education Department.
[6.12.5.1 NMAC - Rp, 6.12.5.1 NMAC, 12-30-14]

6.12.5.2 SCOPE: This rule applies to New Mexico schools that participate in programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 unless otherwise expressly limited.
[6.12.5.2 NMAC - Rp, 6.12.5.2 NMAC, 12-30-14]

6.12.5.3 STATUTORY AUTHORITY: This rule is adopted pursuant to Sections 22-2-1 and 9-24-8, NMSA 1978.
[6.12.5.3 NMAC - Rp, 6.12.5.3 NMAC, 12-30-14]

6.12.5.4 DURATION: Permanent.
[6.12.5.4 NMAC - Rp, 6.12.5.4 NMAC, 12-30-14]

6.12.5.5 EFFECTIVE DATE: December 30, 2014, unless a later date is cited at the end of a section.
[6.12.5.5 NMAC - Rp, 6.12.5.5 NMAC, 12-30-14]

6.12.5.6 OBJECTIVE: This rule addresses the sale of competitive food sold to children attending New Mexico schools that participate in a United States department of agriculture school meal program.
[6.12.5.6 NMAC - Rp, 6.12.5.6 NMAC, 12-30-14]

6.12.5.7 DEFINITIONS: [RESERVED]
[6.12.5.7 NMAC - Rp, 6.12.5.7 NMAC, 12-30-14]

6.12.5.8 IMPLEMENTATION OF FEDERAL REQUIREMENTS FOR COMPETITIVE FOODS

A. Terms defined by federal laws and regulations. Terms defined in United States agriculture department competitive foods rules at 7 CFR 210.11 and 7 CFR 210.11a implementing the all foods sold in schools and smart snacks provisions of the Healthy, Hunger-Free Kids Act of 2010, the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 are incorporated for purposes of these rules.

B. Federal law, rule and guidance limitations regarding beverages and foods sold in schools shall govern the participation in and implementation of New Mexico school meal programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966, except that the public education department shall set a limit on the number of fundraisers permitted on a school campus during each school term. A fundraiser is a sale on a school campus to benefit a school or school organization of beverage or food products limited by a United States department of agriculture school meal program for use, consumption or sale during the school day. No fundraiser may be conducted in competition with school meals in the food service area during meal service. A fundraiser may be conducted only for up to one school day on two occasions per semester or trimester term in a school that participates in United States department of agriculture school meal programs.

C. A wellness policy created pursuant to requirements of 6.12.6 NMAC shall incorporate the limitations stated in Subsection B of this section in annual assurances by a school district or a charter school to the New Mexico public education department. Such assurances shall be reviewed in conjunction with the administrative review of a school food authority.

[6.12.5.8 NMAC - Rp, 6.12.5.8 NMAC, 12-30-14]

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HISTORY OF 6.12.5 NMAC:

History of Repealed Material:

6.12.5 NMAC, Nutrition: Competitive Food Sales (filed 02-14-2006) repealed 12-30-14.

TITLE 6 PRIMARY AND SECONDARY EDUCATION

CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY

PART 6 SCHOOL DISTRICT WELLNESS POLICY

6.12.6.1 ISSUING AGENCY: Public Education Department.
[6.12.6.1 NMAC - N, 02-28-06]

6.12.6.2 SCOPE: This regulation applies to public schools in New Mexico unless otherwise expressly limited.
[6.12.6.2 NMAC - N, 02-28-06]

6.12.6.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Sections 22-2-1 and 9-24-8 NMSA 1978.
[6.12.6.3 NMAC - N, 02-28-06]

6.12.6.4 DURATION: Permanent.
[6.12.6.4 NMAC - N, 02-28-06]

6.12.6.5 EFFECTIVE DATE: February 28, 2006, unless a later date is cited at the end of a section.
[6.12.6.5 NMAC - N, 02-28-06]

6.12.6.6 OBJECTIVE: This rule requires the adoption of local school district wellness policies.
[6.12.6.6 NMAC - N, 02-28-06]

6.12.6.7 DEFINITIONS:

A. "Coordinated school health approach" means the framework for linking health and education. The focus is healthy and successful students. There are eight interactive components of coordinated school health: health education; physical education and activity; nutrition; social and emotional well-being; healthy and safe environment; health services; staff wellness; and family, school and community involvement.

B. "Family, school and community involvement" means an integrated family, school and community approach for enhancing the health and well-being of students by establishing a district school health advisory council that has the responsibility to make recommendations to the local school board in the development or revision, implementation, and evaluation of the wellness policy.

C. "Fund raiser" means a sale on a school campus to benefit a school or school organization of beverage or food products limited by a United States department of agriculture school meal program for use, consumption or sale during the school day in competition with school meals. A fundraiser may be conducted only for up to one school day on two occasions per semester or trimester term in a school that participates in United States department of agriculture school meal programs. The wellness policy implemented through 6.12.6 NMAC shall include annual assurances to the New Mexico public education department of compliance with limitations on "fund raisers" pursuant to this subsection and subject to review as part of the administrative review of a school food authority.

D. "Health education" means the instructional program that provides the opportunity to motivate and assist all students to maintain and improve their health, prevent disease, and reduce health-related risk behaviors. It allows students to develop and demonstrate increasingly sophisticated health-related knowledge, attitudes, skills, and practices. It meets the content standards with benchmarks and performance standards as set forth in 6.30.2.19 NMAC.

E. "Health services" means services provided for students to appraise, protect, and promote health. These services are designed to ensure access or referral to primary health care or behavioral health services or both, foster appropriate use of primary health care services, behavioral health services, prevent and control communicable

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diseases and other health problems, provide emergency care for illness or injury, promote and provide optimum sanitary conditions for a safe school facility and school environment, and provide educational and counseling opportunities for promoting and maintaining individual, family, and community health.

F. "Healthy and safe environment" means the physical and aesthetic surroundings and the psychosocial climate and culture of the school. It supports a total learning experience that promotes personal growth, healthy interpersonal relationships, wellness, and freedom from discrimination and abuse.

G. "Nutrition" means programs that provide access to a variety of nutritious and appealing meals and snacks that accommodate the health and nutrition needs of all students.

H. "Physical activity" means body movement of any type which include recreational, fitness, and sport activities.

I. "Physical education" means the instructional program that provides cognitive content and learning experiences in a variety of activity areas. It provides the opportunity for all students to learn and develop the skills, knowledge and attitudes necessary to personally decide to participate in a lifetime of healthful physical activity. It meets the content standards with benchmarks and performance standards as set forth in Section 6.30.2.20 NMAC.

J. "Social and emotional wellbeing" means services provided to maintain or improve students' mental, emotional, behavioral, and social health.

K. "Staff wellness" means opportunities for school staff to improve their health status through activities such as health assessments, health education and health-related fitness activities. These opportunities encourage school staff to pursue a healthy lifestyle that contributes to their improved health status, improved morale, and a greater personal commitment to the school's overall coordinated school health approach.

L. "Emergency Operation Plan (EOP)" means the document which outlines and explains functions, resources and coordination procedures for responding to and supporting crisis, emergency, terrorist-response, and disaster operations, and is that portion of a safe school plan that details risk assessments and establishes the plans or procedures to manage a crisis, emergency, terrorist or disaster event before, during and after it has occurred and includes, but is not limited to, emergency routes and staff assignments as they relate to immediate actions, delayed actions, mitigation actions, facility evacuations and facility reentry.

[6.12.6.7 NMAC - N, 02-28-06; A, 11-30-06; A, 05-15-14; A, 12-30-14]

6.12.6.8 REQUIREMENTS:

A. This section applies to local school boards, local school districts, and charter schools and governs policies to be implemented by local school districts with regards to student and school employee wellness.

B. Each school district and charter school shall develop and implement a policy that addresses student and school employee wellness through a coordinated school health approach.

C. Each school district and charter school shall submit the wellness policy to the public education department for approval.

(1) Sections of the wellness policy that meet the requirements set forth in Paragraphs (3), (4), (5) and (10) of Subsection D and the requirements set forth in Subsection E of this section shall be submitted to the public education department on or before August 30, 2006.

(2) Sections of the wellness policy that meet the requirements set forth in Paragraphs (1), (2), (6), (7), (8) and (9) of Subsection D of this section shall be submitted to the public education department on or before January 30, 2007.

D. The wellness policy shall include, but shall not be limited to:

(1) a planned, sequential, K-12 health education curriculum that addresses the physical, mental, emotional, and social dimensions of health and is aligned to the health education content standards with benchmarks and performance standards as set forth in 6.30.2.19 NMAC;

(2) a planned, sequential, K-12 physical education curriculum that provides the optimal opportunity for all students to learn and develop skills, knowledge and attitudes necessary to personally decide to participate in lifetime healthful physical activity and is aligned to the physical education content standards with benchmarks and performance standards as set forth in 6.30.2.20 NMAC;

(3) guidelines to provide physical activity opportunities to students before, during and after school;

(4) nutrition guidelines meeting standards established by federal rules at 7 CFR 210.11 and 7 CFR 210.11a, the Healthy Hunger-Free Kids Act of 2010, the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966;

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(5) guidelines for fund raisers established at 6.12.5 NMAC and an annual assurance of compliance with limitations on fund raisers established at 6.12.5 NMAC;

(6) a plan addressing the behavioral health needs of all students in the educational process by focusing on students' social and emotional wellbeing;

(7) school safety plans at each school building focused on supporting healthy and safe learning environments; the school safety plan must be submitted to the public education department for approval on a three-year cycle and must include the following minimum components:

(a) introduction;

(b) school policies and procedures;

(c) prevention; and

(d) a school EOP;

(8) a plan addressing the health services needs of students in the educational process;

(9) a plan addressing the staff wellness needs of all school staff that minimally ensures an equitable work environment and meets the American with Disabilities Act, Part III;

(10) a plan for measuring implementation and evaluation of the wellness policy, including the designation of one or more persons within the school district, or at each school, as appropriate, charged with operational responsibility for ensuring that each school fulfills the district's wellness policy.

E. Family, school and community involvement. Each local board of education shall establish a district school health advisory council that consists of parent(s), school food authority personnel, school board member(s), school administrator(s), school staff; student(s); and community member(s). The school health advisory council shall have the responsibility to make recommendations to the local school board in the development or revision, implementation, and evaluation of the wellness policy consistent with this rule. The school health advisory council shall meet for this purpose a minimum of two times annually.

[6.12.6.8 NMAC - N, 02-28-06; A, 11-30-06; A, 05-15-14; A, 12-30-14]

History of 6.12.6 NMAC: [Reserved]

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Federal Regulations 7 CFR 210.11 and 210.11a are found below

§ 210.11 Competitive food service and standards.

(a) Definitions. For the purpose of this section:

(1) Combination foods means products that contain two or more components representing two or more of the recommended food groups: fruit, vegetable, dairy, protein or grains.

(2) Competitive food means all food and beverages other than meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 available for sale to students on the *School campus* during the *School day*.

(3) Entrée item means an item that is either:

(i) A combination food of meat or meat alternate and whole grain rich food; or

(ii) A combination food of vegetable or fruit and meat or meat alternate; or

(iii) A meat or meat alternate alone with the exception of yogurt, low-fat or reduced fat cheese, nuts, seeds and nut or seed butters, and meat snacks (such as dried beef jerky).

(4) School campus means, for the purpose of competitive food standards implementation, all areas of the property under the jurisdiction of the school that are accessible to students during the school day.

(5) School day means, for the purpose of competitive food standards implementation, the period from the midnight before, to 30 minutes after the end of the official school day.

(b) General requirements for competitive food. **(1) State and local educational agency policies.** State agencies and/or local educational agencies must establish such policies and procedures as are necessary to ensure compliance with this section. State agencies and/or local educational agencies may impose additional restrictions on competitive foods, provided that they are not inconsistent with the requirements of this part.

(2) Recordkeeping. The local educational agency is responsible for the maintenance of records that document compliance with the nutrition standards for all competitive food available for sale to students in areas under its jurisdiction that are outside of the control of the school food authority responsible for the service of reimbursable school meals. In addition, the local educational agency is responsible for ensuring that organizations designated as responsible for food service at the various venues in the schools maintain records in order to ensure and document compliance with the nutrition requirements for the foods and beverages sold to students at these venues during the school day as required by this section. The school food authority is responsible for maintaining records documenting compliance with these for foods sold under the auspices of the nonprofit school food service. At a minimum, records must include receipts, nutrition labels and/or product specifications for the competitive food available for sale to students.

(3) Applicability. The nutrition standards for the sale of competitive food outlined in this section apply to competitive food for all programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 operating on the school campus during the school day.

(4) Fundraiser restrictions. Competitive food and beverage items sold during the school day must meet the nutrition standards for competitive food as required in this section. A special exemption is allowed for the sale of food and/or beverages that do not meet the competitive food standards as required in this section for the purpose of conducting an infrequent school-sponsored fundraiser. Such specially exempted fundraisers must not take place more than the frequency specified by the State agency during such periods that schools are in session. No specially exempted fundraiser foods or beverages may be sold in competition with school meals in the food service area during the meal service.

(c) General nutrition standards for competitive food. **(1) General requirement.** At a minimum, all competitive food sold to students on the school campus during the school day must meet the nutrition standards specified in this section. These standards apply to items as packaged and served to students.

(2) General nutrition standards. To be allowable, a competitive food item must:

(i) Meet all of the competitive food nutrient standards as outlined in this section; and

(ii) Be a grain product that contains 50 percent or more whole grains by weight or have as the first

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ingredient a whole grain; or

(iii) Have as the first ingredient one of the non-grain major food groups: fruits, vegetables, dairy or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); or

(iv) Be a combination food that contains 1/4 cup of fruit and/or vegetable; or

(v) For the period through June 30, 2016, contain 10 percent of the Daily Value of a nutrient of public health concern based on the most recent Dietary Guidelines for Americans (i.e., calcium, potassium, vitamin D or dietary fiber). Effective July 1, 2016, the criterion in this paragraph is obsolete and may not be used to qualify as a competitive food; and

(vi) If water is the first ingredient, the second ingredient must be one of the food items in paragraphs (c)(2)(ii), (iii) or (iv) of this section.

(3) Exemptions. (i) *Entrée items offered as part of the lunch or breakfast program.* Any entrée item offered as part of the lunch program or the breakfast program under 7 CFR Part 220 is exempt from all competitive food standards if it is offered as a competitive food on the day of, or the school day after, it is offered in the lunch or breakfast program. Exempt entrée items offered as a competitive food must be offered in the same or smaller portion sizes as in the lunch or breakfast program. Side dishes offered as part of the lunch or breakfast program and served à la carte must meet the nutrition standards in this section.

(ii) *Sugar-free chewing gum.* Sugar-free chewing gum is exempt from all of the competitive food standards in this section and may be sold to students on the school campus during the school day, at the discretion of the local educational agency.

(d) *Fruits and vegetables.* (1) Fresh, frozen and canned fruits and vegetables with no added ingredients except water or, in the case of fruit, packed in 100 percent fruit juice or light syrup or extra light syrup, are exempt from the nutrient standards included in this section.

(2) Canned vegetables that contain a small amount of sugar for processing purposes, to maintain the quality and structure of the vegetable, are also exempt from the nutrient standards included in this section.

(e) *Grain products.* Grain products acceptable as a competitive food must include 50 percent or more whole grains by weight or have whole grain as the first ingredient. Grain products must meet all of the other nutrient standards included in this section.

(f) *Total fat and saturated fat.* (1) *General requirements.* (i) The total fat content of a competitive food must be not more than 35 percent of total calories from fat per item as packaged or served, except as specified in paragraphs (f)(2) and (3) of this section.

(ii) The saturated fat content of a competitive food must be less than 10 percent of total calories per item as packaged or served, except as specified in paragraph (f)(3) of this section.

(2) *Exemptions to the total fat requirement.* Seafood with no added fat is exempt from the total fat requirement, but subject to the saturated fat, trans fat, sugar, calorie and sodium standards.

(3) *Exemptions to the total fat and saturated fat requirements.* (i) Reduced fat cheese and part skim mozzarella cheese are exempt from the total fat and saturated fat standards, but subject to the trans fat, sugar, calorie and sodium standards. This exemption does not apply to combination foods.

(ii) Nuts and Seeds and Nut/Seed Butters are exempt from the total fat and saturated fat standards, but subject to the trans fat, sugar, calorie and sodium standards. This exemption does not apply to combination products that contain nuts, nut butters or seeds or seed butters with other ingredients such as peanut butter and crackers, trail mix, chocolate covered peanuts, etc.

(iii) Products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat are exempt from the total fat, saturated fat and sugar standards, but subject to the trans fat, calorie and sodium standards.

(g) *Trans fat.* The trans fat content of a competitive food must be zero grams trans fat per portion as packaged or served (not more than 0.5 grams per portion).

(h) *Total sugars.* (1) *General requirement.* The total sugar content of a competitive food must be not more than 35 percent of weight per item as packaged or served, except as specified in paragraph (h)(2) of this section.

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(2) Exemptions to the total sugar requirement. (i) Dried whole fruits or vegetables; dried whole fruit or vegetable pieces; and dehydrated fruits or vegetables with no added nutritive sweeteners are exempt from the sugar standard, but subject to the total fat, saturated fat, trans fat, calorie and sodium standards. There is also an exemption from the sugar standard for dried fruits with nutritive sweeteners that are required for processing and/or palatability purposes;

(ii) Products that consist of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fat are exempt from the total fat, saturated fat, and sugar standards, but subject to the calorie, trans fat, and sodium standards; and

(i) **Calorie and sodium content for snack items and side dishes sold à la carte.** Snack items and side dishes sold à la carte must have not more than 200 calories and 230 mg of sodium per item as packaged or served, including the calories and sodium contained in any added accompaniments such as butter, cream cheese, salad dressing, etc., and must meet all of the other nutrient standards in this section. Effective July 1, 2016, these snack items and side dishes must have not more than 200 calories and 200 mg of sodium per item as packaged or served.

(j) **Calorie and sodium content for entrée items sold à la carte.** Entrée items sold à la carte other than those exempt from the competitive food nutrition standards in paragraph (c)(3)(i) of this section must have not more than 350 calories and 480 mg of sodium per item as packaged or served, including the calories and sodium contained in any added accompaniments such as butter, cream cheese, salad dressing, etc., and must meet all of the other nutrient standards in this section.

(k) **Caffeine.** Foods and beverages available to elementary and middle school-aged students must be caffeine-free, with the exception of trace amounts of naturally occurring caffeine substances. Foods and beverages available to high school-aged students may contain caffeine.

(l) **Accompaniments.** The use of accompaniments is limited when competitive food is sold to students in school. The accompaniments to a competitive food item must be included in the nutrient profile as a part of the food item served in determining if an item meets all of the nutrition standards for competitive food as required in this section. The contribution of the accompaniments may be based on the average amount of the accompaniment used per item at the site.

(m) **Beverages.** (1) **Elementary schools.** Allowable beverages for elementary school-aged students are limited to:

(i) Plain water or plain carbonated water (no size limit);

(ii) Low fat milk, unflavored (no more than 8 fluid ounces);

(iii) Non fat milk, flavored or unflavored (no more than 8 fluid ounces);

(iv) Nutritionally equivalent milk alternatives as permitted in § 210.10 and § 220.8 of this chapter (no more than 8 fluid ounces); and

(v) 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 8 fluid ounces).

(2) **Middle schools.** Allowable beverages for middle school-aged students are limited to:

(i) Plain water or plain carbonated water (no size limit);

(ii) Low fat milk, unflavored (no more than 12 fluid ounces);

(iii) Non fat milk, flavored or unflavored (no more than 12 fluid ounces);

(iv) Nutritionally equivalent milk alternatives as permitted in § 210.10 and § 220.8 of this chapter (no more than 12 fluid ounces); and

(v) 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water (with or without carbonation and with no added sweeteners) (no more than 12 fluid ounces).

(3) **High schools.** Allowable beverages for high school-aged students are limited to:

(i) Plain water or plain carbonated water (no size limit);

(ii) Low fat milk, unflavored (no more than 12 fluid ounces);

(iii) Non fat milk, flavored or unflavored (no more than 12 fluid ounces);

(iv) Nutritionally equivalent milk alternatives as permitted in § 210.10 and § 220.8 of this chapter (no more than 12 fluid ounces);

(v) 100 percent fruit/vegetable juice, and 100 percent fruit and/or vegetable juice diluted with water

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(with or without carbonation and with no added sweeteners) (no more than 12 fluid ounces);
(vi) Calorie-free, flavored water, with or without carbonation (no more than 20 fluid ounces);
(vii) Other beverages that are labeled to contain less than 5 calories per 8 fluid ounces, or less than or equal to 10 calories per 20 fluid ounces (no more than 20 fluid ounces); and
(viii) Other beverages that are labeled to contain no more than 40 calories per 8 fluid ounces or 60 calories per 12 fluid ounces (no more than 12 fluid ounces).
(n) *Implementation date.* This section is to be implemented beginning on July 1, 2014.
[78 FR 39091, June 28, 2013]

§210.11a Competitive food services.

(a) *Definitions.* For the purpose of this section:

(1) *Competitive foods* means any foods sold in competition with the Program to children in food service areas during the lunch periods.

(2) *Food of minimal nutritional value* means: (i) In the case of artificially sweetened foods, a food which provides less than five percent of the Reference Daily Intakes (RDI) for each of eight specified nutrients per serving; and (ii) in the case of all other foods, a food which provides less than five percent of the RDI for each of eight specified nutrients per 100 calories and less than five percent of the RDI for each of eight specified nutrients per serving. The eight nutrients to be assessed for this purpose are—protein, vitamin A, vitamin C, niacin, riboflavin, thiamine, calcium, and iron. All categories of food of minimal nutritional value and petitioning requirements for changing the categories are listed in appendix B of this part.

(b) *General.* State agencies and school food authorities shall establish such rules or regulations as are necessary to control the sale of foods in competition with lunches served under the Program. Such rules or regulations shall prohibit the sale of foods of minimal nutritional value, as listed in appendix B of this part, in the food service areas during the lunch periods. The sale of other competitive foods may, at the discretion of the State agency and school food authority, be allowed in the food service area during the lunch period only if all income from the sale of such foods accrues to the benefit of the nonprofit school food service. State agencies and school food authorities may impose additional restrictions on the sale of and income from all foods sold at any time throughout schools participating in the Program.

(c) *Effective date.* This section remains in effect through June 30, 2014.

[53 FR 29147, Aug. 2, 1988, as amended at 59 FR 23614, May 6, 1994; 78 FR 13448, Feb. 28, 2013. Redesignated and amended at 78 FR 39091, 39092, June 28, 2013]

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Policy Services

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ADVISORY

Volume 12, Number 4

September 2015

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Policy Advisory No. 116 -----	GCFC – Professional Staff Certification and Credentialing Requirements
-----	GCFC-E – Professional Staff Certification and Credentialing Requirements
Policy Advisory No. 117 -----	GDFA – Support Staff Certification and Credentialing Requirements
-----	GDFA-E – Support Staff Certification and Credentialing Requirements

Policy Advisory Discussion

This advisory is in response to the inquiries regarding compliance with the Criminal Offender Employment Act and the required fingerprint check on all employees, contractors and volunteers with unsupervised access to children. The Public Education Department (PED) and the Department of Public Safety (DPS) have been in contact with several districts requesting compliance information. The changes in the attached policies found in this advisory and the provision of the information indicated below should provide those agencies with the information they have requested.

Districts should be aware that there are two different kinds of background checks referenced in your policy manual. The first kind is a background investigation which is defined as any communication with an applicant's/employee's former employer that concerns the education, training, experience, qualifications, and job performance of that individual and which is used for the purpose of evaluation for employment. A background investigation does not include the results of any state or federal criminal history records check. This statement is found in the regulation in GCF and GDF which describes the normal background investigation or check. The forms under the policies GCF and GDF include permission to receive confidential information from former employers that can be faxed or duplicated.

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The second kind of background check is that of a criminal history background check and it is better known as a fingerprint check. The title is self-explanatory and this is the background check about which PED and DPS are seeking information.

In evaluating the the Professional and Support Staff Certification and Credentialing Policies it was found that though they direct compliance with the Criminal Offender Employment Act (28-2-1 et seq. NMSA) there was no statutory citation and thus there was no guidance by statute provided. To remedy this and since the statute is short and easily read, Policy Services has added the reference to both policies and has modified policy to bring those who follow the changes into compliance with the act. The new language in both policies establishes that the criminal history (fingerprint) investigation is permitted upon the candidate being selected as a finalist for employment. The circumstances that would permit the denial, suspension or revocation of employment are also included as well as the conditions under which these circumstances may not be considered. A form was added as an exhibit to the support staff policy, duplicating the form used by professional staff which requires a final candidates to attest to the fact that they have no outstanding criminal admissions or convictions which would disqualify their candidacy.

Finally, there was some question about the form in which the criminal history records were to be kept. These are personnel records and should be maintained in the same manner as all personnel records and with the same care as to their confidentiality. For that reason, there is the reference to the "Rights to inspect public records, exceptions" in 14-2-1 NMSA which allows references for employment and licensing to be excepted from public access or for the personal identifying information to be redacted.

PED and DPS compliance

Policy Services has examined the model policies and recommends sending the following to PED and DPS: policies GCF Professional Staff Hiring , GCFC Professional Staff Qualifications and Requirements, GDF Support Staff Hiring, and GDFA Support Staff Qualifications and Requirements. These mandate compliance with 14-2-1, 22-10A-5, 28-2-1 NMSA and New Mexico Administrative Code 6.60.8.7, 8, and 9, . Also send Policy GBJ, Personnel Records and Files which mandates compliance with the 14-2-1 NMSA et. seq. which limits the access to personnel records. As to answering the questions being posed by PED, that is a matter of local records and should be provided to PED.

If districts are following standard personnel file procedures, they are keeping all personnel files in a locked fire proof file/vault or room with access restricted to those involved in the personnel employment process, per policy. If there are other personnel files, electronic and otherwise, they must be similarly secured from access. If the district is following this protocol, then this is the information that must be provided to DPS to show your compliance with record keeping as mandated by policy GBJ on Personnel Records and Files. Procedures for maintaining files need not be in writing if it is the standard practiced. The Superintendent can attest to the procedure being followed or an examination can show the procedure. All of the hiring and fingerprint policies state "A person not directly involved in the employment decision affecting the specific applicant shall not be permitted unauthorized access to criminal history record information or background information."

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which is the essential statutory requirement of 22-10A-5 NMSA for school districts criminal history records. If, however, district personnel signed agreements to provide other information to the DPS in order to use the CHRI structure, then this is an agreement between parties that requires compliance.

Materials of a legal nature in support of this advisory may be found following the text of the Policies below. If you have any questions, or requests call Policy Services at (505) 469-0193 or E-mail Dr. Donn Williams, Policy Services Director at [nmsbapolicy@cox.net].

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PROFESSIONAL STAFF CERTIFICATION AND CREDENTIALING REQUIREMENTS

(Fingerprinting Requirements)

New Hires

All licensed personnel to be hired by the District, who have not been initially licensed within twenty-four (24) months of applying for employment, shall be required to provide fingerprint cards or electronic fingerprints for licensure in accord with state law and shall pay the cost of obtaining fingerprint Federal Bureau of Investigation or criminal history records. An applicant offered employment; a contractor or contractor's employee, or a volunteer who will have unsupervised access to students shall also be required to provide fingerprint cards or electronic fingerprints and may be required to pay the cost of obtaining Federal Bureau of Investigation fingerprint or criminal history records.

The candidate's fingerprints shall be submitted, along with the form presented as an exhibit to this policy, immediately upon being notified of selected as a finalist for possible employment. The form shall be considered a part of the application for employment. Convictions of felonies or misdemeanors involving moral turpitude if directly related to employment which are contained in the federal bureau of criminal history investigation record shall be used to deny, suspend or revoke employment in accordance with the Criminal Offender Employment Act., provided that However, if the conviction does not directly relate to employment, completion of probation or parole supervision or expiration of a period of three years after final discharge or release from imprisonment without subsequent conviction shall create a presumption of sufficient rehabilitation. Other information contained in the federal bureau of investigation record, if supported by independent evidence, may also form the basis for the employment decisions for good and just cause. A candidates conviction of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse regardless of rehabilitation shall warrant denial, suspension or revocation of employment. Records of arrest not followed by conviction or misdemeanors NOT involving moral turpitude may not be used, distributed or disseminated regarding public employment.

A person who makes a false statement, representation, or certification in any application for employment with the School District may be denied employment or terminated.

Reasons for a decision not to employ an individual based upon conviction of any indicated crime or misdemeanor involving moral turpitude shall be provided to the candidate. An appeal of denial, suspension or revocation of employment based upon the Criminal Offender Employment Act may be requested in accord with the grievance procedure provided in policy.

A person not directly involved in the employment decision affecting the specific applicant shall not be permitted unauthorized access to criminal history record information or background information. All fingerprint or criminal history records are to be confidential

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records and are to be maintained as personnel records in accord with the "Rights to inspect public records, exceptions".

The Superintendent shall report to the Public Education Department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the employee.

Adopted: date of manual adoption

LEGAL REF.: 14-2-1 NMSA
22-10A-5 NMSA (1978)
28-2-1 et seq. NMSA
6.60.8.7 NMAC
6.60.8.8 NMAC
6.60.8.9 NMAC

CROSS REF.: GBK - Staff Grievances
GCF - Professional Staff Hiring
GCG - Part-Time and Substitute Professional Staff
Employment
IJOc - School Volunteers

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EXHIBIT**EXHIBIT**

PROFESSIONAL STAFF CERTIFICATION AND CREDENTIALING REQUIREMENTS

Name _____

Position _____

I, _____, being duly sworn, do hereby certify that I have never been convicted of or admitted in open court or pursuant to a plea agreement committing, and am not now awaiting trial for committing, any of the following criminal offenses in the state of New Mexico or similar offenses in any other jurisdiction:

Sexual abuse of a minor	Felony offenses involving the possession or
Incest	use of marijuana, dangerous drugs or
First- or second-degree murder	narcotic
Kidnapping	drugs
Arson	Misdemeanor offenses involving the
Sexual assault	Possession or use of marijuana or
Sexual exploitation of a minor	dangerous drugs
Felony offenses involving contribut-	Burglary in the first degree
ing to the delinquency of a minor	Burglary in the second or third degree
Commercial sexual exploitation of a	Aggravated or armed robbery
minor	Robbery
Felony offenses involving sale,	Child abuse
distribution, or transportation of,	Sexual conduct with a minor
offer to sell, transport, or distribute,	Molestation of a child
or conspiracy to sell, transport, or	Manslaughter
distribute marijuana or dangerous	Assault or Aggravated assault
or narcotic drugs	Exploitation of minors involving drug
	offenses

Employee signature _____

Date signed _____

Subscribed, sworn to, and acknowledged before me by _____

_____, this _____ day of _____, 20____,

in _____ County, New Mexico.

My Commission Expires _____

Notary Public

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SUPPORT STAFF CERTIFICATION AND CREDENTIALING REQUIREMENTS

(Fingerprinting Requirements)

An applicant offered employment and a contractor or contractor's employee, or a volunteer who will have unsupervised access to students shall be required to provide fingerprint cards or electronic fingerprints and shall be required to pay the cost of obtaining ~~federal bureau of investigation~~ criminal history records.

The candidate's fingerprints shall be submitted, along with the form required presented as ~~an exhibit to this policy~~, immediately upon being notified of selected as a finalist for possible employment. The form shall be considered a part of the application for employment. Convictions of felonies or misdemeanors involving moral turpitude if directly related to employment which are contained in the federal bureau of criminal history investigation record shall be used to deny, suspend or revoke employment in accordance with the Criminal Offender Employment Act., provided that However, if the conviction does not directly relate to employment, completion of probation or parole supervision or expiration of a period of three years after final discharge or release from imprisonment without subsequent conviction shall create a presumption of sufficient rehabilitation. Other information contained in the ~~federal bureau of investigation~~ record, if supported by independent evidence, may also form the basis for the employment decisions for good and just cause. A candidates conviction of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse regardless of rehabilitation shall warrant denial, suspension or revocation of employment. Records of arrest not followed by conviction or misdemeanors NOT involving moral turpitude may not be used, distributed or disseminated regarding public employment.

A person who makes a false statement, representation, or certification in any application for employment with the School District may be denied employment or terminated.

Reasons for a decision not to employ an individual based upon conviction of any indicated crime or misdemeanor involving moral turpitude shall be provided to the candidate. An appeal of denial, suspension or revocation of employment based upon the Criminal Offender Employment Act may be requested in accord with the grievance procedure provided in policy.

The administration may also conduct a background investigation of current employees if it becomes aware of facts, circumstances, or conduct that indicate(s) an individualized reasonable suspicion that undisclosed aspects of the employee's background might disqualify him or her to continue in employment with the District.

A person not directly involved in the employment decision affecting the specific applicant shall not be permitted unauthorized access to criminal history record information or background information. All fingerprint or criminal history records are to be confidential

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records and are to be maintained as personnel records in accord with the "Rights to inspect public records, exceptions".

Adopted: date of manual adoption

LEGAL REF.: 14-2-1 NMSA
22-10A-5 NMSA (1978)
28-2-1 et seq. NMSA
6.60.8.7 NMAC
6.60.8.8 NMAC
6.60.8.9 NMAC

CROSS REF.: GBK - Staff Grievances
GDG - Part-Time and Substitute Support Staff Employment
IJOC - School Volunteers

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Policy Services

EXHIBIT**EXHIBIT**

SUPPORT STAFF CERTIFICATION AND CREDENTIALING REQUIREMENTS

Name _____

Position _____

I, _____, being duly sworn, do hereby certify that I have never been convicted of or admitted in open court or pursuant to a plea agreement committing, and am not now awaiting trial for committing, any of the following criminal offenses in the state of New Mexico or similar offenses in any other jurisdiction:

Sexual abuse of a minor	Felony offenses involving the possession or
Incest	use of marijuana, dangerous drugs or
First- or second-degree murder	narcotic
Kidnapping	drugs
Arson	Misdemeanor offenses involving the
Sexual assault	Possession or use of marijuana or
Sexual exploitation of a minor	dangerous drugs
Felony offenses involving contribut-	Burglary in the first degree
ing to the delinquency of a minor	Burglary in the second or third degree
Commercial sexual exploitation of a	Aggravated or armed robbery
minor	Robbery
Felony offenses involving sale,	Child abuse
distribution, or transportation of,	Sexual conduct with a minor
offer to sell, transport, or distribute,	Molestation of a child
or conspiracy to sell, transport, or	Manslaughter
distribute marijuana or dangerous	Assault or Aggravated assault
or narcotic drugs	Exploitation of minors involving drug
	offenses

Employee signature _____

Date signed _____

Subscribed, sworn to, and acknowledged before me by _____

_____, this _____ day of _____, 20____,

in _____ County, New Mexico.

My Commission Expires _____

Notary Public

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RELEVANT SUPPORT MATERIALS

Criminal Offender Employment Act

28-2-1 . Short title.

Sections 1 through 6 [28-2-1 to 28-2-6 NMSA 1978] of this act may be cited as the "Criminal Offender Employment Act".

History: 1953 Comp., § 41-24-1, enacted by Laws 1974, ch. 78, § 1.

28-2-2. Purpose of act.

The legislature finds that the public is best protected when criminal offenders or ex-convicts are given the opportunity to secure employment or to engage in a lawful trade, occupation or profession and that barriers to such employment should be removed to make rehabilitation feasible.

History: 1953 Comp., § 41-24-2, enacted by Laws 1974, ch. 78, § 2.

28-2-3. Employment eligibility determination.

A. Subject to the provisions of Subsection B of this section and Sections 28-2-4 and 28-2-5 NMSA 1978, in determining eligibility for employment with the state or any of its political subdivisions or for a license, permit, certificate or other authority to engage in any regulated trade, business or profession, the board or other department or agency having jurisdiction may take into consideration a conviction, but the conviction shall not operate as an automatic bar to obtaining public employment or license or other authority to practice the trade, business or profession. A board, department or agency of the state or any of its political subdivisions shall not make an inquiry regarding a conviction on an initial application for employment and shall only take into consideration a conviction after the applicant has been selected as a finalist for the position.

B. The following criminal records shall not be used, distributed or disseminated in connection with an application for any public employment, license or other authority:

- (1) records of arrest not followed by a valid conviction; and
- (2) misdemeanor convictions not involving moral turpitude.

History: 1953 Comp., § 41-24-3, enacted by Laws 1974, ch. 78, § 3; 2010, ch. 76, § 1.

28-2-4. Power to refuse, renew, suspend or revoke public employment or license.

A. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew or may suspend or revoke any public employment or license or other authority to engage in the public employment, trade, business or profession for any one or any combination of the following causes:

- (1) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment, trade, business or profession;
- (2) where the applicant, employee or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, trade, business or profession, if the board or other agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; or
- (3) where the applicant, employee or licensee has been convicted of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse and the applicant, employee or licensee has applied for reinstatement or issuance of a teaching certificate, a license to operate a child-care facility or employment at a child-care facility, regardless of rehabilitation.

B. The board or other agency shall explicitly state in writing the reasons for a decision which prohibits

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the person from engaging in the employment, trade, business or profession if the decision is based in whole or in part on conviction of any crime described in Paragraphs (1) and (3) of Subsection A of this section. Completion of probation or parole supervision or expiration of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of Subsection A of this section.

History: 1953 Comp., § 41-24-4, enacted by Laws 1974, ch. 78, § 4; 1985, ch. 234, § 1; 1997, ch. 238, § 5; 1997, ch. 251, § 1.

28-2-5. Nonapplicability to law enforcement agencies.

The Criminal Offender Employment Act is not applicable to any law enforcement agency; however, nothing herein shall be construed to preclude a law enforcement agency in its discretion from adopting the policy set forth herein.

History: 1953 Comp., § 41-24-5, enacted by Laws 1974, ch. 78, § 5.

28-2-6. Applicability.

The provisions of the Criminal Offender Employment Act relating to any board or other agency which has jurisdiction over the practice of any trade, business or profession apply to authorities made subject to its coverage by law, or by any such authorities' rules or regulations if permitted by law.

History: 1953 Comp., § 41-24-6, enacted by Laws 1974, ch. 78, § 6.

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14-2-1. Right to inspect public records; exceptions.

Text

A. Every person has a right to inspect public records of this state except:

- (1). records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;
- (2). letters of reference concerning employment, licensing or permits;
- (3). letters or memoranda that are matters of opinion in personnel files or students' cumulative files;
- (4). law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this paragraph;
- (5). as provided by the Confidential Materials Act [14-3A-1 NMSA 1978];
- (6). trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;
- (7). tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack; and
- (8). as otherwise provided by law.

B. Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record. The presence of protected personal identifier information on a record does not exempt the record from inspection. Unredacted records that contain protected personal identifier information shall not be made available on publicly accessible web sites operated by or managed on behalf of a public body.

History

1941 Comp., § 13-501, enacted by Laws 1947, ch. 130, § 1; 1953 71-5-1; Laws 1973, ch. 271, § 1; 1981, ch. 47, § 3; 1993, ch. 260, § 1; 1998 (1st S.S.), ch. 3, § 1; 1999, ch. 158, § 1; 2003, ch. 288, § 1; 2005, ch. 126, § 1; 2011, ch. 134, § 2.

Annotations

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Policy Advisory No. 118 -----	IMG – Animals in Schools
-----	IMG-R – Animals in Schools
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Policy Advisory Discussion

The Americans with Disabilities Act National Network has released revised information, guidance and training information pursuant to ADA Title II (which covers state and local government programs) which took effect March 15, 2011. These regulations revise the definition of service animal and add additional provisions. The text of the revised rules which concern school districts is found below in the Relevant Support Materials. New Mexico has a Service Animal Act which was revised in 2013 to reflect the federal changes.

Policy Advisory 118 - IMG Of major concern to school districts is that Service Animals are now defined as dogs or miniature horses. They are allowed in any area their disabled user is allowed including areas where food is served. When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog,

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or ask that the dog demonstrate its ability to perform the work or task. Essentially, the service animal may accompany the individual anywhere that person is permitted to go so long as the individual has control of the animal. An exceptions would be if the animal would interfere with a legitimate safety requirement of the facility, such as a sterile field requirement in a hospital for surgery. Other species of animals whether wild or tame, trained or untrained, are not considered service animals. More information can be obtained by reading the text of the rules or it may be informative to go to http://www.ada.gov/service_animals_2010.htm for information provided by the government on Service Animals. The policy and regulation have been updated to reflect the changes in the regulations and should be adopted to provide compliance with the Federal and State laws regarding Service Animals. New Mexico Statute 28-11-1.1 NMSA tracks the Federal Regulations but also discusses emotional support animals and provides penalties for fraudulent use or abuse of the law regarding Service Animals.

Policy Advisory 119 - IKF In 2014, HB 330 titled Seal of Bilingualism was passed by the New Mexico Legislature requiring the Public Education Department (P.E.D.) to establish a taskforce and develop regulations to implement 22-1-9.1 NMSA. In the past month PED has distributed the guidelines and regulatory guidance for implementing the Seal of Bilingualism-Biliteracy. 6.32.3.1 et seq. NMAC was presented with this guidance. The administrative code is not yet available on line but is included in the guidance document and can be found on the New Mexico Public Education Department web site. The guidance document is titled The New Mexico Diploma of Excellence Bilingual and Biliteracy Seal Guidance Handbook. A webinar was held by PED on September 24th, 2015, to provide guidance and suggest strategies for implementation of the new optional Seal, an award and recognition for students who have studied, and by graduation, attained proficiency in a language other than English.

The Seal of Bilingualism - Biliteracy, may be added to the New Mexico Diploma of Excellence and noted on the student transcript. **PED made it clear that the award is subject to the district approving such an addition to the diploma.** The guidance document contains the administrative code developed for the implementation of the Seal addition. Should a district wish to participate in this program it is suggested that a copy of The New Mexico Diploma of Excellence Bilingual and Biliteracy Seal Guidance Handbook be obtained and read very carefully.

The PED has provided guidance so that students may earn the Seal by demonstrating proficiency in a language other than English, through one of the following methods:

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- (1) certification by an individual tribe;
- (2) units of credit and an assessment;
- (3) units of credit and an alternative process portfolio; or
- (4) an assessment and an alternative process portfolio.

The Board must understand that the proposed addition of the Seal as an award will not be without cost. The implementation will involve administrative, teaching, coordinating costs and perhaps even employment of consultants or others to assess the materials of portfolios as well as arranging for advanced placement testing and other testing or examination options among other things. The Board simply needs to add one sentence to the present policy to recognize the Seal and approve the use of such on the Diploma of Excellence. The regulations in 6.32.3.1 et seq. NMAC are clear, offer optional ways for students to demonstrate their accomplishments, spell out who is responsible for evaluation, and for all intent and purpose provide the direction necessary to allow the district to comply. As indicated, because the regulations in the New Mexico Administrative Code prepared by the PED along with the guidance document serve as the course outline or course of study, the district need only decide if they will participate. Thus, this is the reason for only a one sentence change in the policy.

The Seal addition will add to the burden of the guidance and foreign language departments and will need to be spelled out to the student and community population.

Districts that exceed current state graduation requirements or have added requirements or units should keep in mind that the proposed policy IKF only contains the minimum State requirements for graduation and if the district decides to participate in the Seal program and adopt the policy, a review of your current graduation practices as indicated by your local policy need to be compared to the model policy attached. Should the district not wish to allow the addition of the Seal to the Diploma of Excellence for any reason, **the policy IKF suggested below can be ignored since it is an optional addition to policy.**

Materials of a legal nature in support of this advisory may be found following the text of the Policies below. If you have any questions, or requests call Policy Services at (505) 469-0193 or E-mail Dr. Donn Williams, Policy Services Director at [nmsbpolicy@cox.net].

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ANIMALS IN SCHOOLS

The Superintendent may establish procedures for appropriately and humanely bringing live animals into a classroom. Such procedures shall forbid the transporting of live animals on school buses.

The exception to this ban is that seeing-eye and service dogs are permitted on school buses and in classrooms to perform the functions for which they are trained. ~~A laminated identification card may be requested for verification of the dog's status.~~

LEGAL REF.: 28 CFR 35.104, Americans with Disabilities Act, Title II
28 CFR 35.136, Americans with Disabilities Act, Title II
28-11-1.1 et seq., NMSA (1978)

Adopted: date of manual adoption

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REGULATION**REGULATION****ANIMALS IN SCHOOLS**

Animals may be brought into the classroom for educational purposes and as service animals. Service animals are permitted in any areas where their service owner is normally permitted. However, they must be appropriately and humanely cared for, and properly handled. Any person who wishes to bring an animal into the classroom must receive prior permission from the principal. The following guidelines shall apply to animals in the schools:

- For Service animals, when it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.
- Prior to granting permission, ~~teachers should check~~ with the school nurse office regarding any known allergies among students in the classroom. If allergies exist, parents must be contacted for further direction. Separation, in the case of allergies to service animals is the appropriate remedy.
- Animals shall not be transported on school buses (except service animals).
- Teachers must assume primary responsibility for the humane and proper treatment of any animals in the classroom.
- Only the teacher or students designated by the teacher are to handle the animals.
- If animals are to be kept in the classroom on days when classes are not in session, the teacher must make arrangements for their care and safety.
- Staff members or students who have been bitten by an animal shall report such incident to the principal and the nurse immediately. The principal should notify the public health authorities if the injury merits medical follow-up. Public health authorities should determine the appropriate action and period of confinement for an

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animal if an injury results. Any animal involved in a serious injury must be impounded until authorization for release is granted by health authorities.

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GRADUATION REQUIREMENTS

Regular Education

Ninth grade class of 2009-2010 and after. A minimum of twenty four (24) units of credit aligned to the state academic content and performance standards as listed below are required for graduation for those beginning with the ninth grade class of 2009-2010. A student may receive a high school diploma of excellence after having demonstrated accomplishment of the standards or a portfolio of standards based indicators in mathematics, reading and language arts, writing, social studies, and science adopted by the Secretary of Public Education. A student may also receive the Seal of Bilingual-Biliteracy on the diploma of excellence and have it noted on the school transcript by studying and attaining proficiency in a language other than English. If a student exits from the school system at the end of grade twelve (12) without having satisfied the above requirements, the student shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five (5) years after a student exits from the school system, the student satisfies the requirements listed, the student may receive a high school diploma of excellence. Graduation requirements shall not be changed for a student entering the ninth grade from the requirements specified in law at the time the student enrolled in the ninth grade.

Graduation requirements may be met as follows:

- By successful completion of subject area course requirements.
- By mastery of the standards or a portfolio of standards based indicators adopted by the Secretary of Public Education and other competency requirements for the subject as determined by the Board.
- By earning credits through correspondence courses that meet graduation requirements and/or by passing appropriate courses at the college or university level if the courses are determined to meet standards and criteria established by the Board.

Graduation requirements are:

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

English (grammar, nonfiction writing and literature emphasis).....	4.0 units
Math (one [1] equal to algebra II or higher unless parents sign off and a financial literacy course may meet one of the required units)	4.0 units
Science (two [2] with a laboratory component)	3.0 units
United States History and Geography, World History and Geography, and Government and Economics and one- half (1/2) unit of New Mexico History	3.5 units
Physical Education or marching band or jr. ROTC or NMAA sanctioned interscholastic sports.....	1.0 unit
Career cluster course, workplace readiness or language	1.0 unit
*Electives including student service learning	7.5 units
Total	24.0 units

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

A student shall develop and file an updated final next-step plan during the senior year and prior to graduation that conforms with the requirements for a student curriculum plan pursuant to 22-13-1.1 NMSA 1978. The plan shall explain any differences from previous interim next-step plans, shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent or guardian and the student's guidance counselor or other school official charged with coursework planning for the student. An individualized education program (IEP) filed with the principal that meets the applicable transition and procedural requirements of the federal Individuals with Disabilities in Education Act for qualified students shall satisfy the next-step requirements for that student.

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

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

A high school student required to transfer to an out-of-state school by the transfer of the student's parents, who are members of the New Mexico national guard or the armed forces of the United States, may request that a diploma be issued by the New Mexico high school of transfer. The student must meet the

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guidelines and comply with the requirements of the New Mexico Statutes Annotated regarding military dependent transfers and their courses and grades must meet or exceed New Mexico's requirements for graduation as determined by the School District.

Special Education

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

Adopted: date of manual adoption

LEGAL REF.: 22-1-9.1 NMSA (1978)
 22-13-1.1 NMSA (1978)
 22-13-1.4 NMSA (1978)
 6.29.1.9 NMAC
 6.32.3.1 NMAC

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

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RELEVANT SUPPORT MATERIALS

28 Code of Federal Regulations of Americans with Disabilities Act relative to Service Animals

§ 35.104 Definitions.

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

§ 35.136 Service animals

" (a) General. Generally, a public entity shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

" (b) Exceptions. A public entity may ask an individual with a disability to remove a service animal from the premises if-

" (1) The animal is out of control and the animal's handler does not take effective action to control it; or

" (2) The animal is not housebroken.

" (c) If an animal is properly excluded. If a public entity properly excludes a service animal under § 35.136(b), it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service

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animal on the premises.

" (d) Animal under handler's control. A service animal shall be under the control of its handler. A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means).

" (e) Care or supervision. A public entity is not responsible for the care or supervision of a service animal.

" (f) Inquiries. A public entity shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public entity may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

" (g) Access to areas of a public entity. Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a public entity's facilities where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go.

" (h) Surcharges. A public entity shall not ask or require an individual with a disability to pay a surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

" (i) Miniature horses.

" (1) Reasonable modifications. A public entity shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability.

" (2) Assessment factors. In determining whether reasonable modifications in policies, practices, or procedures can be made to allow a miniature horse into a specific facility, a public entity shall consider-

" (i) The type, size, and weight of the miniature horse and whether the facility can accommodate these features;

" (ii) Whether the handler has sufficient control of the miniature horse;

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- " (iii) Whether the miniature horse is housebroken; and
" (iv) Whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.
" (3) Other requirements. Paragraphs 35.136 (c) through (h) of this section, which apply to service animals, shall also apply to miniature horses.

Chapter 28. Human Rights. Article 11. Assistance Animal Act.

§ 28-11-1.1. Short title

Chapter 28, Article 11 NMSA 1978 may be cited as the "Service Animal Act".

Credits

Added by L. 2005, Ch. 224, § 1, eff. June 17, 2005. Amended by L. 2013, Ch. 57, § 1, eff. June 14, 2013.

§ 28-11-2. Definitions

As used in the Service Animal Act:

- A. "emotional support animal", "comfort animal" or "therapy animal" means an animal selected to accompany an individual with a disability that does not work or perform tasks for the benefit of an individual with a disability and does not accompany at all times an individual with a disability;
- B. "qualified service animal" means any qualified service dog or qualified service miniature horse that has been or is being trained to provide assistance to an individual with a disability; but "qualified service animal" does not include a pet, an emotional support animal, a comfort animal or a therapy animal;
- C. "qualified service dog" means a dog that has been trained or is being trained to work or perform tasks for the benefit of an individual with a disability who has a physical or mental impairment that substantially limits one or more major life activities; and
- D. "qualified service miniature horse" means a miniature horse that has been trained or is

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being trained to work or perform tasks for the benefit of an individual with a disability who has a physical or mental impairment that substantially limits one or more major life activities.

Credits

L. 1989, Ch. 242, § 1; L. 1999, Ch. 262, § 1; L. 1999, Ch. 288, § 1; L. 2005, Ch. 224, § 2, eff. June 17, 2005; L. 2013, Ch. 57, § 2, eff. June 14, 2013.

§ 28-11-3. Admittance of qualified assistance animals

A. Notwithstanding any other provision of law:

(1) a person with a disability who is using a qualified service animal shall be admitted to any building open to the public and to all other public accommodations and shall be allowed access to all common carriers; provided that the qualified service animal is under the control of an owner, a trainer or a handler of the qualified service animal. A person shall not deny an individual with a qualified service animal entry to a building open to the public or to any public accommodation or deny access to a common carrier, regardless of any policy of denying to pets entry to that building, public accommodation or common carrier. A person shall not be required to pay any additional charges for the qualified service animal, but may be liable for any damage done by the qualified service animal; provided that persons without disabilities would be liable for similar damage; and

(2) in an emergency requiring transportation or relocation of the owner or trainer of the qualified service animal, to the extent practicable, accommodations shall be made for the qualified service animal to remain or be reunited with the owner, trainer or handler. When accommodations cannot be made for allowing the qualified service animal to remain with the owner, trainer or handler, the qualified service animal shall be placed pursuant to instructions provided by the owner, trainer or handler.

B. This section does not require a public accommodation or common carrier to permit an owner, trainer or handler using a qualified service animal to have access to a public accommodation or common carrier in circumstances in which the individual's use of the qualified service animal poses a direct threat of significant harm to the health or safety of others.

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Credits

L. 1989, Ch. 242, § 2; L. 1999, Ch. 262, § 2; L. 1999, Ch. 288, § 2; L. 2005, Ch. 224, § 3, eff. June 17, 2005; L. 2013, Ch. 57, § 3, eff. June 14, 2013.

§ 28-11-4. Penalty

A. A person who violates a provision of the Service Animal Act is guilty of a misdemeanor and, upon conviction, shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

B. Nothing in this section shall be construed to preclude any other remedy otherwise available pursuant to common law or other law of this state.

Credits

L. 1989, Ch. 242, § 3; L. 2005, Ch. 224, § 4, eff. June 17, 2005; L. 2013, Ch. 57, § 4, eff. June 14, 2013.

§ 28-11-5. Findings and purpose; interference with qualified assistance animals prohibited; criminal and civil penalties

A. The legislature finds that unrestrained animals constitute a danger to qualified service animals and public safety. The purpose of this section is to protect persons with disabilities and qualified service animals from attack by unrestrained animals.

B. It is unlawful for any person, with no legitimate reason, to:

(1) intentionally interfere with the use of a qualified service animal by harassing or obstructing the owner, trainer or handler of the qualified service animal or the qualified service animal; or

(2) intentionally fail or refuse to control the person's unrestrained animal, which animal interferes with or obstructs the owner, trainer or handler of the qualified service animal.

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C. The provisions of this section shall not apply to unrestrained animals on private property not open to the public.

D. A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished pursuant to Section 31-19-1 NMSA 1978. A person convicted under this section may be ordered to pay restitution, including, but not limited to, actual damages.

E. Nothing in this section shall be construed to preclude any other remedies otherwise available pursuant to common law or the NMSA 1978.

Credits

L. 1999, Ch. 113, § 1; L. 2005, Ch. 224, § 5, eff. June 17, 2005; L. 2013, Ch. 57, § 5, eff. June 14, 2013.

§ 28-11-6. Prohibition of false presentation of animal as a qualified service animal

A. A person shall not knowingly present as a qualified service animal any animal that does not meet a definition of "qualified service animal" pursuant to Section 28-11-2 NMSA 1978. A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished pursuant to Section 31-19-1 NMSA 1978.

B. Nothing in this section shall be construed to preclude any other remedies otherwise available pursuant to common law or the NMSA 1978.

Credits

Added by L. 2013, Ch. 57, § 6, eff. June 14, 2013.

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New Mexico Statute Section

22-1-9.1. New Mexico diploma of excellence; state seal for bilingual and biliterate graduates.

Text

A. The state seal of bilingualism-biliteracy on a New Mexico diploma of excellence certifies that the recipient is proficient for meaningful use in college, a career or to meet a local community language need in a world language other than English. The graduate's high school transcript shall also indicate that the graduate received the state seal on the graduate's New Mexico diploma of excellence.

B. The department shall adopt rules to establish the criteria for students to earn a seal of bilingualism-biliteracy, to include:

(1). the number of units of credit in a language other than English, including content courses taught in a language other than English, English language arts or English as a second language for English language learners;

(2). passage of state assessments in a world language other than English or English language arts for English language learners;

(3). in the case of tribal languages, certification of tribal language proficiency in consultation with individual tribes and adherence to processes and criteria defined by that tribe as appropriate for determining proficiency in its language;

(4). demonstrated proficiency in one or more languages other than English through one of the following methods:

(a). score three or higher on an advanced placement examination for a language other than English;

(b). score four or higher on an international baccalaureate examination for a higher-level language other than English course;

(c). score proficient on a national assessment of language proficiency in a language other than English; or

(d). provide presentations, interviews, essays, portfolios and other alternative processes that demonstrate proficiency in a language other than English.

C. In establishing the criteria for awarding the state seal of bilingualism-biliteracy, the department shall establish and consult with a task force of stakeholders that represent language experts, including:

(1). Indian nations, tribes and pueblos;

(2). teachers of world languages;

(3). endorsed teachers of bilingual multicultural education;

(4). directors of bilingual education;

(5). statewide organizations representing language educators, bilingual education, dual language education and teachers of English as a second language;

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(6). university professors of world languages, heritage languages, Indian languages and bilingual education; and

(7). representatives of the state bilingual advisory council, the Indian education advisory council and the Hispanic education advisory council.

History

History.

Laws 2014, ch. 46, § 1.

Annotations

Effective dates.

Laws 2014, ch. 46 contains no effective date provision, but, pursuant to N.M. Const. art IV § 23, is effective on May 21, 2014, 90 days after adjournment of the legislature.

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 32 EDUCATIONAL STANDARDS - BILINGUAL
MULTICULTURAL EDUCATION
PART 3 SEAL OF BILINGUALISM-BILITERACY ON NEW MEXICO
DIPLOMA OF
EXCELLENCE

6.32.3.1 ISSUING AGENCY: Public Education Department

[6.32.3.1 NMAC - N, 09-15-15]

6.32.3.2 SCOPE: Local school boards and governing bodies of state-chartered schools.

[6.32.3.2 NMAC - N, 09-15-15]

6.32.3.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Sections 22-1-9.1, 22-2-1 and 9-24-8(D) NMSA 1978.

[6.32.3.3 NMAC - N, 09-15-15]

6.32.3.4 DURATION: Permanent

[6.32.3.4 NMAC - N, 09-15-15]

6.32.3.5 EFFECTIVE DATE: September 15, 2015, unless a later date is cited at the end of a section.

[6.32.3.5 NMAC - N, 09-15-15]

6.32.3.6 OBJECTIVE: This rule establishes the criteria for students to earn a state seal of bilingualism-biliteracy on a New Mexico diploma of excellence. The state seal of bilingualism-biliteracy certifies that the recipient is proficient for meaningful use in college, a career or to meet a local community language need in a world language other than English.

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[6.32.3.6 NMAC - N, 09-15-15]

6.32.3.7 DEFINITIONS:

A. "Academic language" means the language used in academic content in formal schooling contexts, including specialized or technical language and discourse related to each content area.

B. "English language learner" means a student whose first or heritage language is not English and who is unable to read, write, speak, or understand English at a level comparable to grade-level English proficient peers and native English speakers.

C. "Expressive language" means using language to express information, ideas, or concepts in either oral, signed, or written communication.

D. "Language other than English" is any language other than English, including world languages.

E. "Proficiency" means able to express oneself in a language with sufficient structural accuracy and vocabulary to participate effectively in most social and academic situations.

F. "Receptive language" means processing language to comprehend information, ideas, or concepts in either oral, signed or written communication.

[6.32.3.7 NMAC - N, 09-15-15]

6.32.3.8 PROFICIENCY REQUIREMENTS:

A. To earn the bilingualism-biliteracy seal on the diploma of excellence, students must meet the graduation requirements as specified in Subsection J of 6.29.1.9 NMAC, and demonstrate proficiency in a language other than English, through one of the following methods:

- (1) certification by an individual tribe;
- (2) units of credit and an assessment;
- (3) units of credit and an alternative process portfolio; or
- (4) an assessment and an alternative process portfolio.

B. Certification by an individual tribe. A tribe may certify that a student is proficient in the tribal language. Tribes will develop the methods and processes for determining proficiency in their respective tribal languages.

C. Units of credit and assessments option. A student may demonstrate proficiency by meeting both the units of credit and assessment requirements.

(1) The student must receive a grade of C or higher in four units of credit in a language other than English. All four units of credit must be in the same language other than English and shall consist of language courses, language arts courses, content area courses or any combination thereof. For the purposes of meeting the requirements of this option, a student may not use units of credit in English language arts or English as a second language for English language learners.

(2) The student must meet the assessment of proficiency requirement as follows:

- (a) the student must attain a score of three or higher on an advanced placement

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examination for a language other than English; or

(b) the student must attain a score of four or higher on an international baccalaureate examination for a higher-level language other than English course; or

(c) the student must score proficient on a national assessment of language proficiency in a language other than English; or

(d) the student may demonstrate proficiency by passing a New Mexico assessment in a world language other than English.

D. Units of credit and alternative process portfolio option. A student may demonstrate proficiency by meeting both the units of credit and alternative process portfolio option requirements.

(1) The student must receive a grade of C or higher in four units of credit in a language other than English. All four units of credit must be in the same language other than English and shall consist of language courses, language arts courses, content area courses or any combination thereof. For the purposes of meeting the requirements of this option, units of credit in English language arts or English as a second language for English language learners cannot be used.

(2) The student must create a portfolio comprised of the following: a presentation, an interview with a panel composed of three or more members of the district's education staff and community who are proficient in the target language other than English, and a student-produced work sample, written when appropriate. Districts shall ensure that the alternative portfolio option includes both the receptive and expressive aspects of the language other than English.

E. Assessment and alternative process portfolio option. A student may demonstrate proficiency by meeting both the assessment and alternative process portfolio option requirements.

(1) The student must meet the assessment of proficiency requirement as follows:

(a) the student must attain a score of three or higher on an advanced placement examination for a language other than English; or

(b) the student must attain a score of four or higher on an international baccalaureate examination for a higher-level language other than English course; or

(c) the student must score proficient on a national assessment of language proficiency in a language other than English; or

(d) the student may demonstrate proficiency by passing a New Mexico assessment in a world language other than English.

(2) The student must create a portfolio comprised of the following: a presentation, an interview with a panel composed of three or more members of the district's education staff and community who are proficient in the target language other than English, and a student-produced work sample, written when appropriate. Districts shall ensure that the alternative portfolio option includes both the receptive and expressive aspects of the

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language other than English.

[6.32.3.8 NMAC - N, 09-15-15]

6.32.3.9 TRANSCRIPT: The graduate's high school transcript must also indicate that the graduate received the state seal on the graduate's New Mexico diploma of excellence.

[6.32.3.9 NMAC - N, 09-15-15]

HISTORY OF 6.32.3 NMAC: [Reserved]

New Mexico Statute Section

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