

POLICY SERVICE ADVISORY

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Policy Advisory Discussion

The recent enactment of changes to New Mexico Administrative Code (NMAC) 6.12.4 (Tobacco, Alcohol and Drug Free Schools) effective December 15, 2015 is the reason for the changes being made to the above policies and procedures. This section of the New Mexico Administrative code was last changed in 2009. There were four major changes to the regulation by the Secretary of Public Education in 2015 as listed below.

- The first and most significant change to the regulation is the requirement that each district prepare policy containing certain items as specified in the regulation to be included in the policy (i.e. prohibiting the use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs in school buildings, on school premises and by students at school-sponsored activities away from school grounds).
- Second, there must be provisions for enforcement of the prohibited acts and activities...
- Third, school personnel must be held harmless for reporting violations.

- Fourth and last, a focused exception to the requirement of Tobacco, Alcohol and Drug Free Schools is to be made that indicates the rule does not apply to "the lawful possession or use by minor students of tobacco-cessation products approved by the United States Food and Drug Administration".

There were no changes required of alcohol or drug related policies by the changes made to 6.12.4 NMAC. The changes indicated above that are important to the alcohol and drug free policy are implemented by inclusion in the posting of signs and notice declaring the campuses tobacco, alcohol and drug free. These postings are found in KFAA and are related to informing students, their parents and families, school personnel, visitors on school premises, local residents, groups, businesses and organizations served by the school of the new requirements.

Policy Advisory 120 - ADB /ADC As to the first and major requirement in the area of preparation of policy, there are simply too many drug, and tobacco laws (alcohol is usually folded in with the drug laws) forbidding and regulating the use, possession and sale of these items to have just one policy. Since there are at least four federal and state laws, regulations and an Arizona Attorney Generals' opinion regarding this area and there are a number of policies that all come under Tobacco, Alcohol and Drug Free Schools, Policy Services has chosen to add a Drugs / Tobacco Free policy **ADB / ADC**. This new policy references all of the relevant policies within the district policy manual referent to tobacco, alcohol and drugs. This new policy provides the citations to the laws and rules and lists the New Mexico Statutory Dee Johnson Clean Air Act, the regulatory New Mexico Drug, Alcohol and Tobacco Free Schools, the Federal Pro-Children Act of 1994 (Environmental Tobacco Smoke) and the Federal regulatory Drug Free Workplace Act. This particular policy can be used to find tobacco, alcohol and drug related policies or as a tool to show compliance to the Public Education Department and others seeking that information.

Policy Advisory 121 - GBED This tobacco policy, targeted at staff, incorporates the requirements of 6.12.4.8 as indicated in the introductory list of changes but Policy Services also leaves intact the prohibitions while on school vehicles and busses and the non-applicability while demonstrating or presenting cessation programs.

Policy Advisory 122 - JICG This tobacco policy, which targets students, incorporates the requirements of 6.12.4.8 as indicated in the introductory list of changes but Policy Services leaves intact the further prohibitions on tobacco, alcohol and drugs while on school vehicles and busses and at transportation pickup areas. The policy also specifies how the students are to be informed of the policy by inclusion in student handbooks and by announcements.

Policy Advisory 123 - KFAA This policy which covers the public and others on school premises has been updated to incorporate the changes required by 6.12.4.8 NMAC as indicated in the introductory list of changes. It also states how the public is to be informed of the policy by postings and announcements and provides the relevant methods of enforcement. The regulation attached to the policy gives further details about notice and enforcement of the prohibitions.

The policy **KF** on Community Use of School Facilities was not revised and is not included in this advisory because it contains the proper notices and prohibitions and will be supported by the posting of the Tobacco, Alcohol and Drug Free School notices containing the listed prohibitions.

Conclusion It is suggested that districts adopt the changes found in Advisories 121 through 123 and consider adopting Advisory 120. Advisory 120 is an informational and compliance oriented addition and is not required but rather suggested. Further, it is suggested that districts review policy **KF** and **Advisory 79** to make sure the district is in compliance with the regulation 6.50.17 NMAC of the New Mexico Public Schools Insurance Authority. Following these requirements will assure that the facility will be tobacco, alcohol, and drug free during use. All of the Policy Services Advisories are on line and accessible at <http://www.nmsba.org/policysvc.htm> . Advisory 79 is located in the information for January of 2011, when it was first issued and recommended.

Please note that the materials supporting these advisories only includes the latest revision of 6.12.4 NMAC. The other citations found in the policies are already in your current manual and can be accessed in the support data bases on line by searching based on their citation in the policy manual at the policy locations found in this advisory.

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].

This Material is written for information only and is not intended as legal advice. Please consult your attorney for further explanation.

Advisory 120

DRUG / TOBACCO FREE SCHOOLS

See the following policies in reference to Tobacco, Alcohol and Drug Free Schools

Drug Free Workplace	- GBEC
Non-Medical Use or Abuse of Drugs or Alcohol	- GBECA
Tobacco Use by Staff Members	- GBED
Administering Medicines to Students	- JLCD
Tobacco Use by Students	- JICG
Drug and Alcohol Use by Students	- JICH
Tobacco Use at Public Functions	- KFA

Adopted: date of manual adoption

LEGAL REF.: 24-16-3 et seq. NMSA Dee Johnson Clean Air Act
 6.12.4.8 NMAC
 1994 Op. Att'y Gen. No. 94-03, 1994 N.M. AG LEXIS 4.
 20 U.S.C. 6083 Pro-Children Act of 1994 (Environmental Tobacco Smoke).
 34 C.F.R. Part 85 Drug Free Workplace Act

Advisory 121

TOBACCO USE BY STAFF MEMBERS / SMOKING

The use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs ~~The possession or use of tobacco products or smoking of any kind~~ is prohibited in the following locations:

- School grounds.
- School buildings.
- School parking lots.
- School playing fields.
- School buses and other District vehicles.
- Off-campus school-sponsored events.

The meaning of the terms included herein shall be as provided in New Mexico Administrative Code 6.12.4.1 through 6.12.4.9. Notice of this policy shall be made by a listing of prohibited items that will be included in a Tobacco, Drug and Alcohol Free School notice posted at the entrance to school buildings and athletic events.

The Superintendent may establish procedures necessary to implement this policy. Disciplinary penalties may be imposed in accord with policies of the District regarding employee conduct and disciplinary actions.

The prohibitions do not apply to an adult when possession or use of the tobacco products are for demonstration purposes as a necessary instructional component of a tobacco prevention or cessation program that is:

- Approved by the school.
- Established in accord with New Mexico Revised Statute.

Adopted: date of manual adoption

LEGAL REF.: 24-16-3 et seq. NMSA Dee Johnson Clean Air Act
6.12.4.8 NMAC
1994 Op. Att'y Gen. No. 94-03, 1994 N.M. AG LEXIS 4.
20 U.S.C. 6083 Pro-Children Act of 1994 (Environmental Tobacco Smoke).
34 C.F.R. Part 85 Drug Free Workplace Act

CROSS REF.: GBEB - Staff Conduct
GCQF - Discipline, Suspension, Termination and Discharge of
Professional Staff Members
GDQD - Discipline, Suspension, Termination and Discharge of
Support Staff Members
JICG - Tobacco Use by Students
KF - Community Use of School Facilities
KFAA - Tobacco Use on School Premises at Public Functions

Advisory 122

TOBACCO USE BY STUDENTS / SMOKING

The use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs ~~The possession or use of tobacco products, man-made tobacco derivatives and products or smoking of any kind~~ is prohibited in the following locations:

- School grounds.
- School buildings.
- School parking lots.
- School playing fields.
- School buses and other District vehicles.
- Transportation pick up areas.
- Off-campus school-sponsored events.

The meaning of the terms included herein shall be as provided in New Mexico Administrative Code 6.12.4.1 through 6.12.4.9. Notice of this policy shall be made a part of the student handbook and a listing of prohibited items will be included in a Tobacco, Drug and Alcohol Free School notice posted at the entrance to school buildings and athletic events.

The Superintendent may establish procedures necessary to implement this policy. Disciplinary penalties ~~for smoking, the possession or use of tobacco or similar products~~ may include, but are not limited to, suspension of the student from school or a recommendation for expulsion when there is evidence of repeated and continuous violation of this policy.

All District employees are expected to cooperate in the enforcement of this policy. Student violations shall be reported to administrative personnel.

No school employee who in good faith reports any known or suspected use, possession or distribution of alcoholic beverages, mood-altering substances or illicit drugs shall be held liable for any civil damages as a result of such report or efforts to enforce this policy.

EXCEPTION: Lawful possession or use by a minor of a tobacco-cessation product approved by the United States food and drug administration shall be permitted by students following district policies for student self-administration of medications.

Adopted: date of manual adoption

LEGAL REF.: 24-16-3 et seq. NMSA Deed Johnson Clean Air Act
6.12.4.8 NMAC
1994 Op. Att'y Gen. No. 94-03, 1994 N.M. AG LEXIS 4.
20 U.S.C. 6083 Pro-Children Act of 1994 (Environmental Tobacco
Smoke).
34 C.F.R. Part 85 Drug Free Workplace Act

CROSS REF.: GBED - Tobacco Use by Staff Members
JK - Student Discipline
JKD - Student Suspension/Expulsion
JLCD - Administering Medications to Students
KF - Community Use of School Facilities
KFAA - Tobacco Use on School Premises at Public Functions

Advisory 123

TOBACCO USE / SMOKING ON SCHOOL PREMISES

The use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs ~~The use of tobacco products or smoking~~ is prohibited in the following locations:

- School grounds.
- School buildings.
- School parking lots.
- School playing fields.
- School buses and other District vehicles.
- Off-campus school-sponsored events.

The meaning of the terms included herein shall be as provided in New Mexico Administrative Code 6.12.4.1 through 6.12.4.9. Notice and a listing of prohibited items will be included in a Tobacco, Drug and Alcohol Free School notice posted at the entrance to school buildings and athletic events.

All District employees are expected to cooperate in the enforcement of this policy. Members of the public using or blatantly flaunting prohibited products on school premises and failing to respond to a verbal warning shall be requested to leave the premises by school supervisory personnel in accord with laws on trespass. Law enforcement may be notified to assist with enforcement.

No school employee who in good faith reports any known or suspected use, possession or distribution of alcoholic beverages, mood-altering substances or illicit drugs shall be held liable for any civil damages as a result of such report or efforts to enforce this policy.

The prohibitions do not apply to an adult when possession or use of the prohibited products are for demonstration purposes as a necessary instructional component of a tobacco prevention or cessation program that is approved by the school.

Adopted: date of manual adoption

LEGAL REF.: 24-16-3 et seq. NMSA Dee Johnson Clean Air Act
6.11.2.9 NMAC
6.12.4.8 NMAC
1994 Op. Att'y Gen. No. 94-03, 1994 N.M. AG LEXIS 4.

20 U.S.C. 6083 Pro-Children Act of 1994 (Environmental Tobacco
Smoke).

34 C.F.R. Part 85 Drug Free Workplace Act

CROSS REF.: GBED - Tobacco Use by Staff Members

JICG - Tobacco Use by Students

REGULATION**REGULATION****TOBACCO USE ON SCHOOL PREMISES
AT PUBLIC FUNCTIONS**

All entrances to buildings and athletic facilities will be posted with a notice that these facilities are tobacco-free alcohol and drug free and that use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs, in school buildings, on school premises is prohibited. Announcements will be made at school activities and events.

All District employees are expected to cooperate in the enforcement of this policy. Student violations shall be reported to administrative personnel. ~~A verbal warning~~ Public and community violators should be given a verbal warning. If there is continued violation or a second violation of the prohibition by public or community persons, ~~the employee's~~ supervisory personnel must be notified for appropriate corrective action.

Members of the public using or blatantly flaunting ~~tobacco or tobacco~~ prohibited products on school premises and failing to respond to a verbal warning shall be requested to leave the premises by school supervisory personnel in accord with laws on trespass. Law enforcement may be notified to assist if required.

RELEVANT SUPPORT MATERIALS

TITLE 6 PRIMARY AND SECONDARY EDUCATION

CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY PART 4 TOBACCO, ALCOHOL AND DRUG FREE SCHOOLS

6.12.4.1 ISSUING AGENCY: Public Education Department [6.12.4.1 NMAC - Rp, 6.12.4.1 NMAC, 12/15/2015]

6.12.4.2 SCOPE: This rule applies to school districts, local school boards and to state-chartered charter schools and governing bodies.

[6.12.4.2 NMAC - Rp, 6.12.4.2 NMAC, 12/15/2015]

6.12.4.3 STATUTORY AUTHORITY: This rule is promulgated by the secretary of public education and the public education department under the authority of Sections 9-24-8, 22-2-1, 22-2-2 and 22-5-4.4 NMSA 1978. [6.12.4.3 NMAC - Rp, 6.12.4.3 NMAC, 12/15/2015]

6.12.4.4 DURATION: Permanent [6.12.4.4 NMAC - Rp, 6.12.4.4 NMAC, 12/15/2015]

6.12.4.5 EFFECTIVE DATE: December 15, 2015, unless a later date is cited at the end of a section. [6.12.4.5 NMAC - Rp, 6.12.4.5 NMAC, xx/xx/2015]

6.12.4.6 OBJECTIVE: The objective of this rule is to prohibit the use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs in school buildings, on school premises and by students at school-sponsored activities away from school grounds.

[6.12.4.6 NMAC - Rp, 6.12.4.6 NMAC, xx/xx/2015]

6.12.4.7 DEFINITIONS:

A. “Alcoholic beverage” means any beverage containing more than one-half percent alcohol by volume, and includes all distilled or rectified spirits, potable alcohol or any similar alcoholic beverages, including all fermented or blended beverages and dilutions or mixtures of one or more of these alcoholic beverages.

B. “E-cigarette”:

(1) means any electronic oral device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine or any other substances the use or inhalation of which simulates smoking; and

(2) includes any such device, or any part of it, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or any other product, name or descriptor; but

(3) does not include any product regulated as a drug or device by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq.

C. “Illicit drugs” means prescription and over-the-counter medications used for non-medical purposes, or not used as medically prescribed by lawfully authorized practitioners or as directed by the manufacturer’s literature, and include all supplemental dietary or nutrition ergogenic aids, stimulants, nootropics, adaptogens, painkillers, sedatives and anxiolytics, blood boosters and other performance-enhancing drugs.

D. “Mood-altering substances” means substances that change, or are capable of changing, a person’s emotional state, and include all stimulants, opioids, intoxicative inhalants and hallucinogens.

E. “Nicotine liquid container” means a bottle or other container of any substance containing nicotine where the substance is sold, marketed or intended for use in an e-cigarette.

F. “School personnel” includes all administrators, principals, teachers, counselors, social workers, speech therapists, psychologists, nurses, librarians and other support staff who is employed by a school, or who perform services for the school on a contractual basis.

G. “Tobacco product” means any product made or derived from tobacco that is intended for human consumption, including any component, part or accessory of a tobacco product. This includes, among other products, cigarettes, cigars, pipe tobacco, roll-your-own tobacco, dissolvable tobacco, and smokeless tobacco. Smokeless tobacco means any snuff or chewing tobacco.

[6.12.4.7 NMAC - Rp, 6.12.4.7 NMAC, 12/15/2015]

6.12.4.8 REQUIREMENTS: Each local school board or governing body shall establish a tobacco, alcohol and drug free school policy:

A. The policy shall provide specific rules of conduct prohibiting the use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs in school buildings, on school premises and by students at school-sponsored activities away from school grounds.

B. Each school district and state-chartered charter school shall detail the prohibited acts and activities under the policy, and shall establish adequate provisions for its enforcement, including the enumeration of possible sanctions or disciplinary action, consistent with applicable statutory and case law.

C. The policy shall provide that no school employee who in good faith reports any known or suspected use, possession or distribution of alcoholic beverages, mood-altering substances or illicit drugs shall be held liable for any civil damages as a result of such report or efforts to enforce the policy.

D. Each school district and state-chartered charter school shall develop and implement a procedure for effectively communicating the policy to students, their parents and families, school personnel, visitors on school premises, and to local residents, groups, businesses and organizations served by the school.

E. Each school district and state-chartered charter school shall post conspicuous notices on all school premises prohibiting the use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs, in school buildings, on school premises and by students at school-sponsored activities away from school grounds.

[6.12.4.8 NMAC - Rp, 6.12.4.8 NMAC, 12/15/2015]

6.12.4.9 EXCEPTION: Sections 6 and 8 of this rule shall not include the lawful possession or use by a minor of a tobacco-cessation product approved by the United States food and drug administration.

[6.12.4.9 NMAC -N, 12/xx/2015]

HISTORY OF 6.12.4 NMAC:

PRE-NMAC HISTORY: The material in this regulation is derived from that previously filed with the State Records Center and Archives under: State Board of Education Regulation No. 94-2, Regulation on Tobacco Free School Districts, filed July 19, 1994.

History of Repealed Material:

6.12.4 NMAC, Tobacco, Alcohol and Drug Free Schools (filed 05-16-2001) repealed 12-15-15.