

# POLICY SERVICES

## ADVISORY

Volume 15, Number 4

September 2018

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**Policy Advisory Discussion.** Effective July 1, 2018 parts of 6.11.2 NMSA were revised or added by the Public Education Department (PED). Those were:

- 6.11.2.7 NMAC **Definitions** - covering the definition of words used in the chapter, but not requiring inclusion in Board policy;
- 6.11.2.10 (E) NMAC **Restraint and Seclusion** - adding a requirement for annual training of personnel on behavior intervention, management techniques and use of restraint and seclusion techniques;
- 6.11.2.10 (H) NMAC **Discipline of students experiencing homelessness** - adding limits on discipline of homeless students, developing staff awareness of homeless student behavior and developing alternatives to out of school suspension or expulsion; and

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- 6.11.2.10 (I) NMAC **Discipline of students with disabilities** - adding materials already required or determined in Federal rules governing discipline of students with disabilities and already included in policy JKD on Student Suspension and Expulsion.

The definitions of 6.11.2.7 NMAC are to be used in the interpretation of Chapter 11 Part 2 of Title 6, and need not be in Board policy. Much of the material added to 6.11.2.10 (E) and (I) was already incorporated in policies JLI on Student Safety and JKD on Student Suspension and Expulsion. The revisions to policies below reflects the changes that require compliance indicated in the additions to 6.11.2 NMAC that are not included in the two policies mentioned in the sentence above.

**Policy Advisory 164 - GCH - Professional Staff Orientation and Training.** As explained in the discussion, policy GHC is modified to incorporate the requirements of training and development of staff awareness pertaining to restraint and seclusion and homeless student discipline respectively. Also added are cross references to policies pertinent to some of the activities and legal references. The additions were made as subheadings under disciplinary and conduct rules and procedures. In order that all professional staff are given the training and awareness, a sentence was added in the opening paragraph requiring such orientation by immediate supervisors of all new staff if they were not present for the orientation program.

**Policy Advisory 165 - JFABD - Admission of Homeless Students.** Policy Services would like our clients to note that the statement by PED per 6.11.2.10 (H) "Removing students experiencing homelessness from school shall be used only as a last resort, pursuant to the requirements of 42 U.S.C. 11431 et seq., the McKinney-Vento Homelessness Assistance Act." is not being incorporated in JKD on Student Suspension and Expulsion. JKD provides the court interpretations, statutory and regulatory procedures implementing short and long-term suspensions and expulsions for all categories of students. Instead, Policy Services assigned the duties described in 6.11.2.10 (H) to the Homeless Liaison Officer in JFABD on Admission of Homeless Students. This assignment includes making all professional staff aware of the requirements of 6.11.2.10 (H) including the section on disciplinary removal of homeless students only as a last resort. A summary of the homeless liaison duties is added to policy JFABD. JFABD-R is modified to remove the name of the State Homeless Coordinator, making the policy more generic and less likely to need correction. Exhibit JFABD-E, providing the job description of the Homeless Liaison person, is changed by adding the additional assignments implementing discipline of students experiencing homelessness as found in 6.11.2.10 (H) .

The Policies, Regulation and Exhibit are recommended for adoption by Policy Services to assist Boards in giving direction to their administration and staff for compliance with the latest PED directives.

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

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## PROFESSIONAL STAFF ORIENTATION AND TRAINING

The Superintendent will establish a program to provide orientation for all new District employees. Those staff members not present at the orientation / training will be given a program of the same or similar content on or immediately after employment by their immediate supervisor. At a minimum, this program will cover the following items:

- Goals, objectives, and programs of the District.
- Personnel policies.
- Terms of employment.
- ~~General~~ Disciplinary and conduct rules and procedures.
  - Annually, train staff regarding behavioral supports or behavioral management and the use of restraint and seclusion techniques.
  - Provide activities that create an awareness among staff of homeless student behaviors and direct them toward strategies and support so that out of school suspension or expulsion would be used only as a last resort.
- Salary and fringe-benefit plans.
- Self-improvement opportunities.
- The evaluation program and name(s) of evaluator(s).
- Handling of body fluids.
- Child abuse reporting responsibilities.

*Adopted:* date of manual adoption

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LEGAL REF.: 6.11.2.10 NMAC  
42 U.S.C. 11301, McKinney-Vento Homeless Assistance  
Act of 2001, as amended by the Every Student  
Succeeds Act (ESSA) of 2015

CROSS REF.: GBEBB - Staff Conduct with Students  
GBGC - Employee Assistance  
JK - Student Discipline  
JLF - Child Abuse / Child Protection  
JLI - Student Safety

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# ADVISORY

## 165

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## ADMISSION OF HOMELESS STUDENTS

This policy is intended to direct compliance with New Mexico State Laws and New Mexico Administrative Code and the McKinney-Vento Homeless Education Assistance Improvements Act of 2001, as amended by the Every Student Succeeds Act (ESSA) of 2015, and should be read as consistent with those documents.

### Definitions

The term "homeless students" means individuals who lack a fixed, regular, and adequate nighttime residence and includes:

- students who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
- students who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- students who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- migratory students who qualify as homeless because the children are living in circumstances described above.

The term "school of origin" means the school that the student attended when permanently housed or the school in which the student was last enrolled.

The term "unaccompanied youth" includes a youth not in the physical custody of a parent or guardian.

### Liaison for Homeless Students

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The Chief Executive Officer will designate an appropriate staff person as liaison for homeless students who will carry out duties as assigned. Among those duties will be the responsibility to coordinate activities and programs in the best interest of homeless students that will include, but not be limited to, establishment of procedures to:

- continue the student's education in the school of origin for the duration of homelessness;
  - in any case in which a family becomes homeless between academic years or during an academic year; or
  - for the remainder of the academic year, if the student becomes permanently housed during an academic year; or
- Enroll the student in any public school that non-homeless students who live in the attendance area in which the student is actually living are eligible to attend.
- Review records for homeless students:
  - identify patterns in disciplinary actions for the homeless students;
  - create an awareness among staff of the types of behaviors homeless students may exhibit; and
  - encourage behavioral alternatives and offer disciplinary methods to all new professional staff so that out of school suspension and expulsion of homeless students will be used only as a last resort.

### **Best Interest of the Homeless Student**

In determining the best interest of the homeless student, the school shall:

- To the extent feasible, keep a homeless student in the school of origin, except when doing so is contrary to the wishes of the student's parent or guardian;
- Provide a written explanation, including a statement regarding the right to appeal, to the homeless student's parent or guardian, if the homeless student is sent to a school other than the school of origin or a school requested by the parent or guardian; and
- In the case of an unaccompanied youth, the liaison for homeless students shall assist in placement or enrollment decisions, considering the views of such unaccompanied youth, and providing notice to such student of the right to appeal.

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*Adopted:* date of manual adoption

LEGAL REF.: 6.10.3.1 NMAC  
6.11.2.10 NMAC  
42 U.S.C. 11301, McKinney-Vento Homeless Assistance  
Act of 2001, as amended by the Every Student  
Succeeds Act (ESSA) of 2015

CROSS REF.: EEAA - Walkers and Riders  
GCH - Professional Staff Orientation and Training  
IKEB - Acceleration  
JF - Student Admissions  
JFAA - Admission of Resident Students  
JFAB - Admission of Nonresident Students  
JFB - Open Enrollment  
JG - Assignment of Students to Classes and Grade Levels  
JLCB - Immunizations of Students  
JR - Student Records  
JRCA - Request for Transfer of Records

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**ADMISSION OF HOMELESS STUDENTS**

**(Notice)**

In accordance with the McKinney-Vento Homeless Assistance Act of 2001, as amended by the Every Student Succeeds Act (ESSA) of 2015 [722 (e)(3)(C)] and the New Mexico Administrative Code Section 6.10.3.1 *et seq.*, the parent or guardian (student if unaccompanied) is to receive and acknowledge notice of the rights set forth below. This notice should be provided in a language the student, parent or guardian can understand.

**Admission**

The school selected by the homeless student shall immediately admit the homeless student, even if the student is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation.

The enrolling school shall immediately contact the school last attended by the student to obtain relevant academic and other records.

If the student needs to obtain immunizations, or immunization or medical records, the enrolling school shall immediately refer the parent or guardian of the student to the liaison for homeless students, who shall assist in obtaining necessary immunizations, or immunization or medical records.

**Admission Disputes**

If a dispute arises over school selection or enrollment in a school:

- the student shall be immediately admitted to the school in which enrollment is sought, pending resolution of the dispute;
- the parent or guardian of the student shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or student to appeal the decision;

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- the student, parent, or guardian shall be referred to the liaison for homeless students, who shall carry out the dispute resolution process as expeditiously as possible after receiving notice of the dispute in accord with the procedure found in the New Mexico Administrative Code; and
- in the case of an unaccompanied youth, the liaison for homeless students shall ensure that the student is immediately enrolled in school pending resolution of the dispute.

### **Enrollment Decision**

The decision regarding enrollment shall be made regardless of whether the student lives with the homeless parents or has been temporarily placed elsewhere.

### **Parent Rights (Student if Unaccompanied)**

The parent or guardian of a homeless student (student if unaccompanied) has the right to:

- Continue the student's education in the school of origin for the duration of homelessness:
  - in any case in which a family becomes homeless between academic years or during an academic year; or
  - for the remainder of the academic year, if the student becomes permanently housed during an academic year; or
- Enroll the student in any public school that non-homeless students who live in the attendance area in which the student is actually living are eligible to attend.
- Appeal if the homeless student is sent to a school other than the school of origin or a school requested by the parent or guardian. Upon appeal the district has ten (10) days to reconsider the initial determination and make a final decision as to the position taken.
  - An appeal shall be made on the forms provided by the school.
  - If not satisfied by the result of the appeal further appeal may be made to the state level through the State Coordinator of Education for Homeless whose contact information is given below.
- Enroll in, and have full and equal opportunity to succeed in school without being segregated from the non-homeless student population.

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- Receive educational services for which such families and students are eligible, including:
  - Transportation services and meals programs;
  - Head Start and Even Start programs and preschool programs administered by the School; and
  - Referrals to health care and immunization services, dental services, mental health services, and other appropriate services.
- Identification of service without being stigmatized as homeless by school personnel.
- Obtain assistance of advocates or attorneys.
- Provide written or oral documentation to support their position.

A parent or guardian (student if unaccompanied) may contact the District Liaison for Homeless Children and Youths at;

District: [REDACTED]  
 Attn: [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 Telephone: [REDACTED]  
 E-mail: [REDACTED]

The District Liaison for Homeless shall ensure that the parent or guardian of a homeless student, and any unaccompanied youth is:

- assisted in accessing transportation to the selected school;
- provided assistance in exercise of the right to attend the school of choice and other necessary services;
- and is provided the notice information in a manner and form understandable to the recipient and if necessary and to the extent feasible, in the native language of the recipient.

A parent or guardian (student if unaccompanied) may contact the State Coordinator for Education of Homeless Children and Youths to appeal if not satisfied with the resolution of a dispute at the local level. The contact information is listed below;

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~~Dana Malone~~, McKinney-Vento Homeless Education  
State Coordinator  
New Mexico Public Education Department  
Coordinated School Health and Wellness Bureau  
120 S. Federal Place, Room 206  
Santa Fe, NM 87501  
Telephone: (505) 827-1464  
E-mail: ~~Dana.Malone@state.nm.us~~

The State Coordinator is the appeal authority having jurisdiction over the local school district.

The signature below indicates that the signatory has received and understands this information on rights.

\_\_\_\_\_  
Signature of Parent, Legal Guardian  
(or unaccompanied student)

\_\_\_\_\_  
Date

*One (1) copy to signatory and one (1) to the District liaison officer file.*

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## EXHIBIT

## EXHIBIT

## ADMISSION OF HOMELESS STUDENTS

## LIAISON POSITION

The ~~School~~ District shall designate a liaison for homeless students and, in conjunction with the state coordinator, shall inform school personnel, service providers, and advocates working with homeless families of the duties of the ~~School~~ liaison.

The ~~School~~ District Liaison for Homeless Students shall ensure that:

- homeless students are identified by school personnel and through coordination activities with other entities and agencies;
- homeless students enroll in, and have full and equal opportunity to succeed in, the District's schools;
- homeless families and students receive educational services for which such families and students are eligible, including:
  - Head Start and Even Start programs and preschool programs administered by the School; and
  - referrals to health care and immunization services, dental services, mental health services, and other appropriate services;
- the parents or guardians of homeless students are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;
- homeless students receive free meals and are appropriately coded and entered in the student-teacher accountability system;
- public notice of the educational rights of homeless students is disseminated where such students receive services under the Homeless Assistance Act, such as:
  - schools;

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- family shelters; and
- soup kitchens.
- disputes over school selection or enrollment in a school are mediated in a manner that:
  - immediately admits the student to the school in which enrollment is sought, pending resolution of the dispute;
  - provides the parent or guardian of the student with a written explanation of the school's decision regarding the school selection or enrollment, and informs the parent, guardian, or student of the rights to appeal the decision;
  - expeditiously carries out the dispute resolution process after receiving notice of the dispute; and
  - in the case of an unaccompanied youth, ensures that the student is immediately enrolled in school pending resolution of the dispute;
- fully informs the parent or guardian of a homeless student, and any unaccompanied youth, of all transportation services, including arrangements for transportation to the school of origin;
- assists the parent or guardian of a homeless student, and any unaccompanied youth, in accessing transportation to the selected school;
- staff are informed and aware of the types of behaviors exhibited by homeless students that might subject them to disciplinary action; and:
  - provide strategies and supports through the student assessment team process for matters of homeless student discipline;
  - encourage alternatives to out of school suspension or expulsion of homeless students through alternative discipline in all cases possible; and
  - connect the homeless student and parent with mental health services as needed for school disciplinary issues

As a part of the duties, the ~~School~~ District Liaison for Homeless Students will coordinate and collaborate with state coordinators and community and school personnel responsible for the provision of education and related services to homeless students.

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The ~~School~~ School District Liaison for Homeless Students will forward the dispute resolution process form of the Public Education Department along with the written explanation of the school's decision to the Department's homeless liaison within five (5) calendar days of the school's final decision regarding a dispute on placement of the homeless student, if the decision is contrary to the homeless parent or child. The following information shall be included:

- School name, address, phone and fax number;
- Student's name, identification number, grade, and address;
- Parent, guardian or complaining party's name, relationship to student, address, and phone number;
- Whether student lives in a shelter;
- Name of school child or youth chooses to be enrolled in pending resolution of dispute;
- Whether school enrolled in is school of origin;
- Reason for complaint;
- Signature of parent guardian or complaining party; and
- The principal's actions on the complaint.

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discipline or the maintenance of order. The term may include school security officers, but only to the extent of their authority as established under written local school board policies.

B. "Criminal acts" are acts defined as criminal under federal and state law, and any applicable municipal or county criminal ordinances.

C. "Delinquent acts" are acts so defined in Subsection A of Section 32A-2-3 NMSA 1978 of the Delinquency Act.

D. "Detention" means requiring a student to remain inside or otherwise restricting his or her liberty at times when other students are free for recess or to leave school.

E. "Disciplinarian" means a person or group authorized to impose punishment after the facts have been determined by a hearing authority.

F. "Disruptive conduct" means willful conduct which:  
(1) materially and in fact disrupts or interferes with the operation of the public schools or the orderly conduct of any public school activity, including individual classes; or  
(2) leads an administrative authority reasonably to forecast that such disruption or interference is likely to occur unless preventive action is taken.

G. "Expulsion" means the removal of a student from school either permanently or for an indefinite time exceeding 10 school days or a locally established lesser period.

H. "Gang related activity" is disruptive conduct.

I. "Hearing authority" means a person or group designated to hear evidence and determine the facts of a case at the required formal hearing.

J. "Immediate removal" means the removal of a student from school for one school day or less under emergency conditions and without a prior hearing.

K. "In-school suspension" means suspending a student from one or more regular classes while requiring the student to spend the time in a designated area at the same school or elsewhere.

L. "Legal limits" include the requirements of the federal and state constitutions and governing statutes, standards and regulations, and also include the fundamental common-law requirement that rules of student conduct be reasonable exercises of the schools' authority in pursuance of legitimate educational and related functions. There are special limitations arising from constitutional guarantees of protected free speech and expression which must be balanced against the schools need to foster an educational atmosphere free from undue disruptions to appropriate discipline.

M. "Long-term suspension" means the removal of a student from school for a specified time exceeding either 10 school days or any lesser period a local school board may set as a limit on temporary suspension.

N. "Mechanical restraint" means the use of any device or material attached

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or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove, but "mechanical restraint" does not include mechanical supports or protective devices.

O. "Parent" means the natural parent, a guardian or other person or entity having custody and control of a student who is subject to the Compulsory School Attendance Law, Section 22-12-1 et seq. NMSA 1978, or the student if the student is not subject to compulsory attendance.

P. "Physical restraint" means the use of physical force without the use of any device or material that restricts the free movement of all or a portion of a student's body, but "physical restraint" does not include physical escort.

Q. "Public school" means the campus of and any building, facility, vehicle or other item of property owned, operated, controlled by or in the possession of a local school district. For purposes of student discipline, the term also includes any non-school premises being used for school-sponsored activities.

R. "Refusal to cooperate with school personnel" means a student's willful refusal to obey the lawful instructions or orders of school personnel whose responsibilities include supervision of students.

S. "Refusal to identify self" means a person's willful refusal, upon request from school personnel known or identified as such to the person, to identify himself or herself accurately.

T. "Restraint" when not otherwise modified means mechanical or physical restraint.

U. "Review authority" is a person or group authorized by the local board to review a disciplinarian's final decision to impose a long-term suspension or expulsion.

V. "Seclusion" means the involuntary confinement of a student alone in a room from which egress is prevented. "Seclusion" does not mean the use of a voluntary behavior management technique, including a timeout location, as part of a student's education plan, individual safety plan, behavioral plan or individualized education program that involves the student's separation from a larger group for purposes of calming.

W. "Sexual harassment", regarding students, means unwelcome or unwanted conduct of a sexual nature (verbal, non-verbal or physical) when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of the advancement of a student in school programs or activities;
- (2) submission to or rejection of such conduct by a student is used as the basis for decisions/opportunities affecting the student;
- (3) such conduct substantially interferes with a student's learning or creates an intimidating, hostile or offensive learning environment.

X. "School personnel" means all members of the staff, faculty and administration employed by the local school board. The term includes school security

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officers, school bus drivers and their aides, and also authorized agents of the schools, such as volunteers or chaperons, whose responsibilities include supervision of students.

Y. "Student" means a person who is enrolled in one or more classes at a public school or a person who was a student during the previous school year and is participating in a school sponsored activity connected with his or her prior status as a student.

Z. "Student experiencing homelessness" means children and youth as defined by Section 725(2) of the federal McKinney-Vento Act.

AA. "Temporary suspension" means the removal of a student from school for a specified period of 10 school days or less after a rudimentary hearing.

BB. "Weapon" as set forth in Section 22-5-4.7 NMSA 1978 means:  
(1) any firearm that is designed to, may readily be converted to or will expel a projectile by the action of an explosion; and  
(2) any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter-ounce, mine or similar device. [8/15/1997; 6.11.2.7 NMAC - Rn, 6 NMAC 1.4.7, 11/30/2000; A, 7/1/2018]

#### 6.11.2.8 GENERAL PROVISIONS:

A. Jurisdiction over students. All officials, employees and authorized agents of the public schools whose responsibilities include supervision of students shall have comprehensive authority within constitutional bounds to maintain order and discipline in school. In exercising this authority, such officials, employees and authorized agents of the public schools may exercise such powers of control, supervision, and correction over students as may be reasonably necessary to enable them to properly perform their duties and accomplish the purposes of education. This authority applies whenever students are lawfully subject to the schools' control, regardless of place. During such periods, public school authorities shall have the right to supervise and control the conduct of students, and students shall have the duty to submit to the schools' authority. The foregoing is intended to reflect the common law regarding the rights, duties and liabilities of public school authorities in supervising, controlling and disciplining students. Nothing herein shall be construed as enlarging the liability of public school authorities beyond that imposed by statute, common law or public education department rule.

B. School authority over non-students. In furtherance of the state's compelling interest in the orderly operation of the public schools and school activities, school officials have the following forms of authority over non-students whose actions adversely affect school operations or activities.

(1) On school property: Local school boards may prohibit entry to and provide for the removal from any public school building or grounds of any person who

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refuses to identify him/herself and state a lawful purpose for entering. Any person who refuses may be removed by school authorities, who may use reasonable physical force to accomplish the removal. Alternately, a person who refuses and who then refuses a lawful request to leave school premises may be subject to arrest by law officers for criminal offenses including but not limited to criminal trespass, interference with the educational process or disorderly conduct. A person who does identify him/herself and states a lawful purpose may nevertheless be subject to removal by school officials for engaging in activities prohibited by this rule. The person may also be subject to arrest by law officers if (s)he is committing any crime.

(2) Off school property: Public school authorities have indirect and limited authority over the activities of non-students off school property. To the extent that non-students' conduct at or near schools or school-sponsored activities may constitute a criminal offense, including the crimes of interference with the educational process, disorderly conduct or criminal trespass (after refusing a lawful request to leave), school authorities may request law enforcement agencies to arrest the offenders.

C. Statement of policy. A primary responsibility of the New Mexico public schools and their professional staffs shall be to instill in students an appreciation of our representative form of government, the rights and responsibilities of the individual or group and the legal processes whereby necessary changes are effected.

(1) The school is a community and the rules and regulations of a school are the laws of that community. All persons enjoying the rights of citizenship are subject to the laws of their community. Each carries with it a corresponding obligation.

(2) The right to attend public school is not absolute. It is conditioned on each student's acceptance of the obligation to abide by the lawful rules of the school community until and unless the rules are changed through lawful processes.

(3) Teachers, administrators and other school employees also have rights and duties. Teachers are required by law to maintain a suitable environment for teaming in their classes and to assist in maintaining school order and discipline. Administrators are responsible for maintaining and facilitating the educational program by ensuring an orderly, safe environment in the public schools. In discharging their duties, all school employees have the right to be free from intimidation or abuse and to have their lawful requests and instructions followed.

(4) Nothing in this rule shall be held to affect the due process rights of school employees or their use of any local school district grievance procedure. This rule does not address employment disputes.

D. Local school board authority: Local school boards have both the authority and the responsibility to ensure that suitable rules of student conduct and appropriate disciplinary processes are established within their school districts. Within legal limits as defined in Subsection L. of 6.11.2.7 NMAC above, and subject to the minimums prescribed in

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this rule, local boards have discretion to develop such rules, regulations, policies and procedures as they deem appropriate to local conditions, including policies which afford students more protection than the minimums established here. Local school boards and administrative authorities which deem it appropriate may provide for student, community or appropriate state and local agency participation in the formulation and enforcement of school rules.

E. Severability: Any part of this rule found by adjudication before a competent tribunal to be contrary to law shall be stricken without effect to the remainder. [08/15/1997; 6.11.2.8 NMAC - Rn, 6 NMAC 1.4.8, 11/30/2000; A, 11/13/2009]

**6.11.2.9 RULES OF CONDUCT FOR NEW MEXICO PUBLIC SCHOOLS:** The acts specified in Subsection A. of 6.11.2.9 NMAC below are prohibited in all the public schools of New Mexico. Within legal limits as defined in Subsection L. of 6.11.2.7 NMAC above, local school boards have discretion to develop rules of conduct governing all others area of student and school activity.

A. Prohibited activities: The commission of or participation in the activities designated below is prohibited in all New Mexico public schools and is prohibited for students whenever they are subject to school control. Acts prohibited by this rule:

- (1) criminal or delinquent acts;
- (2) gang related activity;
- (3) sexual harassment;
- (4) disruptive conduct;
- (5) refusal to identify self; and
- (6) refusal to cooperate with school personnel.

B. Regulated activities: Beyond those activities designated above as prohibited, all other areas of student conduct may be regulated within legal limits by local school boards as they deem appropriate to local conditions. Conduct by non students which affects school operations may be regulated within legal limits pursuant to any of the forms of authority described in Subsection B. of 6.11.2.8 NMAC above. Activities subject to local board regulation within legal limits include, but are not limited to:

- (1) school attendance;
- (2) use of and access to the public schools, including:
  - (a) restrictions on vehicular traffic on school property,
  - (b) prohibition of or conditions on the presence of non-school persons on school grounds or in school buildings while school is in session; and
  - (c) reasonable standards of conduct for all persons attending school- sponsored activities or other activities on school property;
- (3) students' dress and personal appearance;
- (4) use of controlled substances, alcohol and tobacco in the public

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schools;

- (5) speech and assembly within the public schools;
- (6) publications distributed in the public schools;
- (7) the existence, scope and conditions of availability of student privileges, including extracurricular activities and rules governing participation;
- (8) by statute, Section 22-5-4.7 NMSA 1978, each school district is required to adopt a policy providing for the expulsion from school, for a period of not less than one year, of any student who is determined to have knowingly brought a weapon to a school under the jurisdiction of the local board; the local school board or the superintendent of the school district may modify the expulsion requirement on a case-by-case basis; the special rule provisions of Subsection D. of 6.11.2.11 NMAC apply to students with disabilities;
- (9) the discipline of students for out-of-school conduct having a direct and immediate effect on school discipline or the general safety and welfare of the school.

[08/15/1997; 6.11.2.9 NMAC - Rn, 6 NMAC 1.4.9, 11/30/2000; A, 11/13/2009]

#### 6.11.2.10 ENFORCING RULES OF CONDUCT:

A. Enforcing attendance requirements. Formal enforcement action under the Compulsory School Attendance Law, supra, and the Family Services Act, Section 32A-3A-1 et seq. NMSA 1978 shall be initiated whenever a student's absences indicate that the law is being violated. An administrative authority who has reason to believe a student is violating local school board attendance policies may take whatever further disciplinary action is deemed appropriate under local policies.

B. Search and seizure: School property assigned to a student and a student's person or property while under the authority of the public schools are subject to search, and items found are subject to seizure, in accordance with the requirements below.

(1) Notice of search policy. Students shall be given reasonable notice, through distribution of written policies or otherwise, of each school's policy on searches at the beginning of each school year or upon admission for students entering during the school year.

(2) Who may search. Certified school personnel, school security personnel and school bus drivers are "authorized persons" to conduct searches when a search is permissible as set forth below. An authorized person who is conducting a search may request the assistance of some other person(s), who upon consent become(s) an authorized person for the purpose of that search only.

(3) When search permissible. Unless local school board policy provides otherwise, an authorized person may conduct a search when the authorized person has a reasonable suspicion that a crime or other breach of disciplinary rules is occurring or has occurred. An administrative authority may direct or conduct a search under the same

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conditions and also when the administrative authority has reasonable cause to believe that a search is necessary to help maintain school discipline.

(4) **Conduct of searches; witnesses.** The following requirements govern the conduct of permissible searches by authorized persons.

(a) **School property, including lockers and school buses, may be searched with or without students present unless a local school board or administrative authority provides otherwise.** When students are not present for locker searches, another authorized person shall serve as a witness whenever possible. Locks furnished by students should not be destroyed unless a student refuses to open one or circumstances otherwise render such action necessary in the judgment of the administrative authority.

(b) **Student vehicles when on campus or otherwise under school control and students' personal effects which are not within their immediate physical possession may be searched in accordance with the requirements for locker searches.**

(c) **Physical searches of a student's person may be conducted only by an authorized person who is of the same sex as the student, and except when circumstances render it impossible may be conducted only in the presence of another authorized person of the same sex.** The extent of the search must be reasonably related to the infraction, and the search must not be excessively intrusive in light of the student's age and sex, and the nature of the infraction.

(5) **Seizure of items: Illegal items, legal items which threaten the safety or security of others and items which are used to disrupt or interfere with the educational process may be seized by authorized persons.** Seized items shall be released to appropriate authorities or a student's parent or returned to the student when and if the administrative authority deems appropriate.

(6) **Notification of law enforcement authorities:** Unless a local school board policy provides otherwise, an administrative authority shall have discretion to notify the local children's court attorney, district attorney or other law enforcement officers when a search discloses illegally possessed contraband material or evidence of some other crime or delinquent act.

C. **Basis for disciplinary action:** A student may appropriately be disciplined by administrative authorities in the following circumstances:

(1) **for committing any act which endangers the health or safety of students, school personnel or others for whose safety the public school is responsible, or for conduct which reasonably appears to threaten such dangers if not restrained, regardless of whether an established rule of conduct has been violated;**

(2) **for violating valid rules of student conduct established by the local school board or by an administrative authority to whom the board has delegated rulemaking authority, when the student knew or should have known of the rule in question or that the conduct was prohibited; or**

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(3) for committing acts prohibited by this rule, when the student knew or should have known that the conduct was prohibited.

D. Selection of disciplinary sanctions: Within legal limits as defined in Subsection L of 6.11.2.7 NMAC above, local school boards have discretion to determine the appropriate sanction(s) to be imposed for violations of rules of student conduct, or to authorize appropriate administrative authorities to make such determinations.

(1) School discipline and criminal charges: Appropriate disciplinary actions may be taken against students regardless of whether criminal charges are also filed in connection with an incident.

(2) Nondiscriminatory enforcement: Local school boards and administrative authorities shall not enforce school rules or impose disciplinary punishments in a manner which discriminates against any student on the basis of race, religion, color, national origin, ancestry, sex, or disability, except to the extent otherwise permitted or required by law or regulation. This statement shall not be construed as requiring identical treatment of students for violation of the same rule; it shall be read as prohibiting differential treatment which is based on race, religion, color, national origin, ancestry, sex, or disability rather than on other differences in individual cases or students.

E. Restraint and seclusion: In accordance with Section 22-5-4.12 NMSA 1978, each school shall follow requirements for the use of restraint and seclusion techniques.

(1) Schools shall establish and review annually policies and procedures, as approved by the local school board or governing body, for the use of restraint and seclusion techniques. Such policies and procedures shall require and describe appropriate training for school personnel and shall include requirements in relation to the use of restraint and seclusion techniques.

(a) A school may permit the use of restraint and seclusion techniques on any student pursuant to the requirements in Section 22-5-4.12 NMSA 1978.

(b) Less restrictive interventions, including positive behavioral intervention supports or other comparable behavior management techniques, shall be implemented prior to the use of restraint and seclusion techniques.

(c) If a restraint or seclusion technique is used on a student, trained and authorized school employees shall maintain continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use, pursuant to the requirements in Section 22-5-4.12 NMSA 1978.

(2) Districts or charter schools shall develop and implement an annual training for designated school personnel regarding positive behavioral intervention supports or comparable behavior management techniques and the use of restraint and seclusion techniques. In the event that new designated school personnel are employed within the school after the provision of the annual training, the principal of the school, or a person authorized to act officially in a matter involving school discipline or the maintenance

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of order within the school, shall ensure that a training is provided to new designated school personnel within 60 days of employment.

(3) Schools shall update school safety plans.

(a) A school safety plan pursuant to requirements of Paragraph (7) of Subsection D of 6.12.6.8 NMAC shall include additional minimum requirements.

(i) The school safety plan shall not be specific to any individual student.

(ii) The school safety planning team shall include at least one of each of the following: administrator, educator, and special education expert and may include a counselor or social worker, nurse, and school resource officer or security staff.

(b) A school safety plan pursuant to requirements of Paragraph 7 of Subsection D of 6.12.6.8 NMAC shall be submitted to the department on a triennial basis, on a schedule as determined by the department. Notice of school safety plan submittal will be provided by the department to local education agencies 90 days prior to the due date.

(4) Schools shall establish reporting and documentation procedures pursuant to the requirements listed in Section 22-5-4.12 NMSA 1978. In addition, schools shall provide written or oral assurance of secure storage and access to written documentation in accordance with 20 U.S.C. § 1232g; 34 CFR Part 99, Family Educational Rights and Privacy Act, as well as any other applicable federal or state laws or rules governing the privacy of such documents.

(5) Exemptions to the requirements prescribed in Subsection E of 6.11.2.10 NMAC shall be pursuant to Subsections G and H of Section 22-5-4.12 NMSA 1978.

F. Corporal punishment: Corporal punishment shall be prohibited by each local school board and each governing body of a charter school pursuant to Subsection B of Section 22-5-4.3 NMSA 1978. Restraint or seclusion techniques used in compliance with Subsection E of 6.11.2.10 NMAC shall not be deemed to be corporal punishment.

G. Detention, suspension and expulsion: Where detention, suspension or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in 6.11.2.12 NMAC, below. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection I of 6.11.2.10 NMAC and 6.11.2.11 NMAC below.

H. Discipline of students experiencing homelessness: Removing students experiencing homelessness from school shall be used only as a last resort, pursuant to the requirements in 42 U.S.C. 11431 et seq., the McKinney-Vento Homelessness Assistance Act.

(1) Public schools shall develop discipline policies and procedures that are reviewed at least annually and align with local school board or governing body policies. Policies and procedures shall:

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(a) through professional development activities, create an awareness among educators and administrators of the types of behaviors that students experiencing homelessness may exhibit due to homelessness and provide strategies and supports to address the behaviors through the student assistance team process in accordance with Subsection D of 6.29.1.9 NMAC;

(b) take into account the issues related to a student's homelessness by talking with the student and applicable staff and families prior to taking disciplinary action;

(c) consult with school behavior response teams or other applicable personnel to assign appropriate discipline related to the behavior;

(d) implement discipline alternatives to out of school suspensions or expulsions or classroom removals, if possible; and

(e) connect students with mental health services as needed.

(2) Public schools shall review school discipline records and data of students experiencing homelessness in order to identify any patterns in disciplinary actions that indicate an unfair bias against the students. The collection and review of such records shall be in compliance with the Family Educational Rights and Privacy Act, as well as any other applicable federal or state laws or rules governing the privacy of such documents.

I. Discipline of students with disabilities: Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, the public schools are required by state law and regulations to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. Public school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530.

(1) Long-term suspensions or expulsions of students with disabilities shall be governed by the procedures set forth in 6.11.2.11 NMAC below.

(2) Temporary suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of 6.11.2.12 NMAC below, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of Paragraph (3) of Subsection I of 6.11.2.10 NMAC below.

(3) Program prescriptions. A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with this rule. However, the IEP team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including

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appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student with a disability's IEP, except that an IEP team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this rule.

(4) Immediate removal. Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of 6.11.2.12 NMAC below.

(5) A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR Sec. 300.534 have been met.

(6) Referral to and action by law enforcement and judicial authorities.

(a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

(b) Transmittal of records.

(i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.

(ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

[08/15/1997; 6.11.2.10 NMAC - Rn, 6 NMAC 1.4.10, 11/30/2000; A, 6/29/2007; A, 11/13/2009; A, 10/31/2011; A, 7/1/2018]

#### 6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

A. General. The following rules shall apply when a student with a disability under IDEA violates a rule of conduct as set forth in this rule which may result in:

(1) long-term suspension or expulsion; or

(2) any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing IDEA at 34 CFR Secs. 300.530 through 300.536 and these or other public education department rules and standards.

B. When behavior is not a manifestation of disability. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that

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gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to Subsection C of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in Subsection I of this section.

**C. Manifestation determination.**

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a rule of student conduct, the administrative authority, the parent and relevant members of the child's IEP team (as determined by the parent and the administrative authority) must review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine:

(a) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or

(b) if the conduct in question was the direct result of the administrative authority's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the administrative authority, the parent and relevant members of the child's IEP team determine that a condition in either Subparagraph (a) or (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met.

(3) If the administrative authority, the parent and relevant members of the child's IEP team determine the condition described in Subparagraph (b) of Paragraph (1) of Subsection C of 6.11.2.11 NMAC was met, the administrative authority must take immediate steps to remedy those deficiencies.

**D. Determination that behavior is manifestation of disability.** If the administrative authority, the parent and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must comply within 34 CFR Sec. 300.530(f).

**E. Special circumstances.** School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child's behavior involves one of the special circumstances listed in 34 CFR Sec. 300.530(g). For purposes of this subsection, the definitions provided in 34 CFR Sec. 300.530(i) shall apply.

**F. Determination of setting.** The student's IEP team determines the interim alternative educational setting for services under Subsections B and E of this section.

**G. Change of placement because of disciplinary removals.** For purposes of removals of a student with a disability from the child's current educational placement under 6.11.2.11 and 6.11.2.12 NMAC, a change of placement occurs if the conditions provided in 34

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CFR Sec. 300.536 are met.

H. **Parental notification.** On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR Sec. 300.504.

I. **Services.** A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services as provided in 34 CFR Sec. 300.530(d).

J. **Appeal.**

(1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.

(2) A hearing officer who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR Sec. 300.532(b).

(3) When an appeal under this subsection has been made by either the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Subsections B or E of this section, whichever ever occurs first, unless the parent and the administrative authority agree otherwise.

[08/15/1997; 6.11.2.11 NMAC - Rn, 6 NMAC 1.4.11 & A, 11/30/2000; A, 9/15/2005; A, 6/29/2007; A, 11/13/2009]

**6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS AND EXPULSIONS:** The authority of the state and of local school boards to prescribe and enforce standards of conduct for public school students must be exercised consistently with constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules. But it is a property right which may only be denied where school authorities have adhered to the minimum procedural safeguards required to afford the student due process of law. This section prescribes minimum requirements for detention, in-school suspension and temporary, long-term or permanent removal of students from the public schools. Local school boards may adopt procedures which afford students more protection than this rule requires. The procedures in this section apply only to disciplinary detentions, suspensions and expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence or other requirements for valid enrollment, nor to the removal

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from school membership reports of students who have been absent from school for 10 consecutive school days in accordance with Subsection B of Section 22-8-2 NMSA 1978. Nothing in this section should be construed as prohibiting school boards or administrative authorities from involving other school staff, students and members of the community in the enforcement of rules of student conduct to the extent they believe is appropriate.

A. **Post-suspension placement of students.** Any student suspended from school shall be delivered directly by a school official to the student's parent(s), legal guardian or an adult designated by the parent(s) or the legal guardian, or kept on school grounds until the usual end of the school day.

B. **Students with disabilities.** This section does not apply to long-term suspension or expulsion of students who are disabled pursuant to the IDEA or Section 504. The procedures for long-term suspension or expulsion of disabled students are set forth in Section 6.11.2.11 NMAC above. School personnel under this section may remove a student with a disability who violates a rule of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under Subsection G of 6.11.2.11 NMAC above).

C. **Immediate removal:** Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process may be immediately removed from school, subject to the following rules.

(1) A rudimentary hearing, as required for temporary suspensions, shall follow as soon as possible.

(2) Students shall be reinstated after no more than one school day unless within that time a temporary suspension is also imposed after the required rudimentary hearing. In such circumstances, a single hearing will support both the immediate removal and a temporary suspension imposed in connection with the same incident(s).

(3) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and the action taken as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the school day following the immediate removal, the school shall on that day mail a written notice with the required information to the parent's address of record.

D. **Temporary suspension.**

(1) A local school board may limit temporary suspensions to periods shorter than 10 school days.

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(2) A student facing temporary suspension shall first be informed of the charges against him or her and, if (s)he denies them, shall be told what evidence supports the charge(s) and be given an opportunity to present his or her version of the facts. The following rules apply.

(a) The hearing may be an informal discussion and may follow immediately after the notice of the charges is given.

(b) Unless the administrative authority decides a delay is essential to permit a fuller exploration of the facts, this discussion may take place and a temporary suspension may be imposed within minutes after the alleged misconduct has occurred.

(c) A student who denies a charge of misconduct shall be told what act(s) (s)he is accused of committing, shall be given an explanation of the evidence supporting the accusation(s) and shall then be given the opportunity to explain his or her version of the facts. The administrative authority is not required to divulge the identity of informants, although (s)he should not withhold such information without good cause. (S)he is required to disclose the substance of all evidence on which (s)he proposes to base a decision in the matter.

(d) The administrative authority is not required to allow the student to secure counsel, to confront or cross-examine witnesses supporting the charge(s), or to call witnesses to verify the student's version of the incident, but none of these is prohibited.

(e) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and their possible or actual consequence as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent's address of record.

**E. In-school suspension.**

(1) In-school suspension may be imposed with or without further restriction of student privileges. Any student who is placed in an in-school suspension which exceeds 10 school days must be provided with an instructional program that meets both state and local educational requirements. Student privileges, however, may be restricted for longer than 10 school days.

(2) In-school suspensions of any length shall be accomplished according to the procedures for a temporary suspension as set forth above. A local school board may limit the length of in-school suspensions which may be accomplished under temporary suspension procedures. No in-school suspension student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.

**F. Detention.**

(1) Detention may be imposed in connection with in-school

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suspension, but is distinct from in-school suspension in that it does not entail removing the student from any of his or her regular classes.

(2) The authority of the schools to supervise and control the conduct of students includes the authority to impose reasonable periods of detention during the day or outside normal school hours as a disciplinary measure. No detained student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom. Reasonable periods of detention may be imposed in accordance with the procedures for temporary suspension.

**G. Long-term suspension and expulsion.**

(1) Each local school board shall authorize appropriate administrative authorities to initiate procedures leading to long-term suspension or expulsion. Where prompt action to suspend a student long-term is deemed appropriate, a temporary suspension may be imposed while the procedures for long-term suspension or expulsion are activated. However, where a decision following the required formal hearing is delayed beyond the end of the temporary suspension, the student must be returned to school pending the final outcome unless the provisions of Subparagraphs (j) and (k) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC below apply.

(2) A student who has been validly expelled or suspended is not entitled to receive any educational services from the local district during the period of the exclusion from school. A local school board may provide alternative arrangements, including correspondence courses at the student's or parent's expense pursuant to public education department requirements, if the board deems such arrangements appropriate.

(3) Each local school board shall establish, or shall authorize appropriate administrative authorities to establish, appropriate processes for handling long-term suspensions and expulsions. Unless the terms expressly indicate otherwise, nothing in the procedures below shall be construed as directing that any required decision be made by any particular person or body or at any particular level of administrative organization.

(4) The following rules shall govern the imposition of long-term suspensions or expulsions:

(a) Hearing authority; disciplinarian. The same person or group may, but need not, perform the functions of both hearing authority and disciplinarian. Where the functions are divided, the hearing authority's determination of the facts is conclusive on the disciplinarian, but the disciplinarian may reject any punishment recommended by the hearing authority.

(b) Review authority. Unless the local school board provides otherwise, a review authority shall have discretion to modify or overrule the disciplinarian's decision, but may not impose a harsher punishment. A review authority shall be bound by a hearing authority's factual determinations except as provided in Subparagraph

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(o) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC below.

(c) **Disqualification.** No person shall act as hearing authority, disciplinarian or review authority in a case where (s)he was directly involved in or witnessed the incident(s) in question, or if (s)he has prejudged disputed facts or is biased for or against any person who will actively participate in the proceedings.

(d) **Local board participation.** A local board may act as hearing authority, disciplinarian or review authority for any cases involving proposed long-term suspensions or expulsions. Whenever a quorum of the local board acts in any such capacity, however, the Open Meetings Act, Section 10-15-1 et seq., NMSA 1978 requires a public meeting.

(e) **Initiation of procedures.** An authorized administrative authority shall initiate procedures for long-term suspension or expulsion of a student by designating a hearing authority and disciplinarian in accordance with local board policies, scheduling a formal hearing in consultation with the hearing authority and preparing and serving a written notice meeting the requirements of Subparagraph (h) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC below.

(f) **Service of notice.** The written notice shall be addressed to the student, through his or her parent(s), and shall be served upon the parent(s) personally or by mail.

(g) **Timing of hearing.** The hearing shall be scheduled no sooner than five nor later than 10 school days from the date of receipt of the notice by the parent(s). The hearing authority may grant or deny a request to delay the hearing in accordance with the provisions of Subparagraph (i) of Paragraph (4) of Subparagraph (i) of Subsection G of 6.11.2.12 NMAC below.

(h) **Contents of notice.** The written notice must contain all of the following information, parts of which may be covered by appropriate reference to copies of any policies or regulations furnished with the notice:

(i) the school rule(s) alleged to have been violated, a concise statement of the alleged act(s) of the student on which the charge(s) are based and a statement of the possible penalty;

(ii) the date, time and place of the hearing, and a statement that both the student and parent are entitled and urged to be present;

(iii) a clear statement that the hearing will take place as scheduled unless the hearing authority grants a delay or the student and parent agree to waive the hearing and comply voluntarily with the proposed disciplinary action or with a negotiated penalty, and a clear and conspicuous warning that a failure to appear will not delay the hearing and may lead to the imposition of the proposed penalty by default;

(iv) a statement that the student has the right to be represented at the hearing by legal counsel, a parent or some other representative

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designated in a written notice filed at least seventy-two (72) hours before the hearing with the contact person named pursuant to Item (vi) of Subparagraph (h) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC below;

(v) a description of the procedures governing the hearing;

(vi) the name, business address and telephone number of a contact person through whom the student, parent or designated representative may request a delay or seek further information, including access to any documentary evidence or exhibits which the school proposes to introduce at the hearing; and

(vii) any other information, materials or instructions deemed appropriate by the administrative authority who prepares the notice.

(i) Delay of hearing. The hearing authority shall have discretion to grant or deny a request by the student or the appropriate administrative authority to postpone the hearing. Such discretion may be limited or guided by local school board policies not otherwise inconsistent with this rule.

(j) Students status pending hearing. Where a student has been suspended temporarily and a formal hearing on long-term suspension or expulsion will not occur until after the temporary suspension has expired, the student shall be returned to school at the end of the temporary suspension unless:

(i) the provisions of Subparagraph (k) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC below apply, or

(ii) the student and parent(s) have knowingly and voluntarily waived the students right to return to school pending the outcome of the formal proceedings, or

(iii) the appropriate administrative authority has conducted an interim hearing pursuant to a written local school board policy made available to the student which affords further due process protection sufficient to support the student's continued exclusion pending the outcome of the formal procedures.

(k) Waiver of hearing; voluntary compliance or negotiated penalty. A student and his or her parent(s) may elect to waive the formal hearing and review procedures and comply voluntarily with the proposed penalty, or may waive the hearing and review and negotiate a mutually acceptable penalty with the designated disciplinarian. Such a waiver and compliance agreement shall be made voluntarily, with knowledge of the rights being relinquished, and shall be evidenced by a written document signed by the student, the parent(s), and the appropriate school official.

(l) Procedure for hearing and decision. The formal hearing is not a trial. It is an administrative hearing designed to ensure a calm, orderly determination by an impartial hearing authority of the facts of a case of alleged serious misconduct. Technical rules of evidence and procedure do not apply. The following-rules

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govern the conduct of the hearing and the ultimate decision.

(i) The school shall have the burden of proof of misconduct.

(ii) The student and his or her parent shall have the following rights: The right to be represented by legal counsel or other designated representative, however, the school is not required to provide representation; the right to present evidence, subject to reasonable requirements of substantiation at the discretion of the hearing authority and subject to exclusion of evidence deemed irrelevant or redundant; the right to confront and cross-examine adverse witnesses, subject to reasonable limitation by the hearing authority; the right to have a decision based solely on the evidence presented at the hearing and the applicable legal rules, including the governing rules of student conduct.

(iii) The hearing authority shall determine whether the alleged act(s) of misconduct have been proved by a preponderance of the evidence presented at a hearing at which the student or a designated representative have appeared.

(iv) If no one has appeared on the students behalf within a reasonable time after the announced time for the hearing, the hearing authority shall determine whether the student, through the parent, received notice of the hearing. If so, the hearing authority shall review the schools' evidence to determine whether it is sufficient to support the charges(s) of misconduct.

(v) A hearing authority who is also a disciplinarian shall impose an appropriate sanction if (s)he finds that the allegations of misconduct have been proved under the standards of either Item (iii) or (iv) of Subparagraph (I) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC above. A hearing authority who is not a disciplinarian shall report its findings, together with any recommended sanction, to the disciplinarian promptly after the hearing.

(vi) Arrangements to make a tape recording or keep minutes of the proceedings shall be made by the administrative authority who scheduled the hearing and prepared the written notice. A verbatim written transcript is not required, but any minutes or other written record shall fairly reflect the substance of the evidence presented.

(vii) The hearing authority may announce a decision on the question of whether the allegation(s) of misconduct have been proved at the close of the hearing. A hearing authority who is also a disciplinarian may also impose a penalty at the close of the hearing.

(viii) In any event, the hearing authority shall prepare and mail or deliver to the student, through the parent, a written decision within five working days after the hearing. The decision shall include a concise summary of the evidence upon which the hearing authority based its factual determinations. A hearing authority who is

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also a disciplinarian shall include in the report a statement of the penalty, if any, to be imposed, and shall state reasons for the chosen penalty. A hearing authority who is not a disciplinarian shall forward a copy of his or her written decision to the disciplinarian forthwith. The disciplinarian shall prepare a written decision, including reasons for choosing any penalty imposed, and mail or deliver it to the student, through the parent, within five working days of receipt of the hearing authority's report.

(ix) A disciplinarian who is not a hearing authority may observe but not participate in the proceedings at a formal hearing. If the disciplinarian has done so and if the hearing authority announces a decision at the close of the hearing, the disciplinarian may also announce his or her decision at that time.

(x) The disciplinarian's decision shall take effect immediately upon initial notification to the parent, either at the close of the hearing or upon receipt of the written decision. If initial notification is by mail, the parent shall be presumed to have received the notice on the fifth calendar day after the date of mailing unless a receipt for certified mail, if used, indicates a different date of receipt.

(m) Effect of decision. If the hearing authority decides that no allegation(s) of misconduct have been proved, or if the disciplinarian declines to impose a penalty despite a finding that an act or acts of misconduct have been proved, the matter shall be closed. If the disciplinarian imposes any sanction on the student, the decision shall take effect immediately upon notification to the parent and shall continue in force during any subsequent review.

(n) Right of review. Unless the local school board was the disciplinarian, a student aggrieved by a disciplinarian's decision after a formal hearing shall have the right to have the decision reviewed if the penalty imposed was at least as severe as a long-term suspension or expulsion, an in-school suspension exceeding one school semester or a denial or restriction of student privileges for one semester or longer. A local school board may grant a right of review for less severe penalties. Local school boards shall establish appropriate mechanisms for review except where the local board was the disciplinarian, in which case its decision is final and not reviewable administratively. A student request for review must be submitted to the review authority within 10 school days after the student is informed of the disciplinarian's decision.

(o) Conduct of review. Unless the local board provides otherwise, a review authority shall have discretion to modify the disciplinarian's decision, including imposing any lesser sanction deemed appropriate. A review authority shall be bound by the hearing authority's factual determinations unless the student persuades the review authority that a finding of fact was arbitrary, capricious or unsupported by substantial evidence or that new evidence which has come to light since the hearing and which could not with reasonable diligence have been discovered in time for the hearing would manifestly change the factual determination. Upon any such finding, the review authority shall have

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discretion to receive new evidence, reconsider evidence introduced at the hearing or conduct a de novo hearing. In the absence of any such finding, the review shall be limited to an inquiry into the appropriateness of the penalty imposed.

(p) **Form of review.** Unless the local board provides otherwise, a review authority shall have discretion to conduct a review on the written record of the hearing and decision in the case, to limit new submissions by the aggrieved student and school authorities to written materials or to grant a conference or hearing at which the student and his or her representative, and school authorities may present their respective views in person. Where a conference or hearing is granted, the record-keeping requirements of Item(vi) of Subparagraph (l) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC above apply.

(q) **Timing of review.** Except in extraordinary circumstances, a review shall be concluded no later than 15 working days after a student's written request for review is received by the appropriate administrative authority.

(r) **Decision.** A review authority may announce a decision at the close of any conference or hearing held on review. In any event, the review authority shall prepare a written decision, including concise reasons, and mail or deliver it to the disciplinarian, the hearing authority and the student, through the parent, within 10 working days after the review is concluded.

(s) **Effect of decision.** Unless the local school board provides otherwise, a review authority's decision shall be the final administrative action to which a student is entitled.

[08/15/1997; 6.11.2.12 NMAC - Rn, 6 NMAC 1.4.12, 11/30/2000; A, 6/29/2007; A, 11/13/2009]

**HISTORY OF 6.11.2 NMAC:**

**PRE-NMAC HISTORY:** The material in this part was derived from that previously filed with the State Records Center and Archives under: State Board of Education (SBE) Regulation No. 68-2, Loco Parentis, filed February 6, 1968;

SBE Regulation No. 71-5, Rights and Responsibilities of the Public Schools, filed July 1, 1971; SBE Regulation No. 71-6, Rights and Responsibilities of the Public Schools, filed August 26, 1971;

Amendment No. 1 to SBE Regulation 71- 6, Amendment to State Board Rights and Responsibilities, filed June 19, 1972;

SBE Regulation No. 73-9, Jurisdiction Over Students, filed May 07, 1973;

SBE Regulation No. 77-3, Rights and Responsibilities of the Public Schools and Public School Students, filed July 12, 1977;

Amendment 1 to SBE Regulation No. 77-3, Rights and Responsibilities of the Public Schools and Public School Students, filed November 23, 1977;

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**Amendment 2 to SBE Regulation No. 77-3, Rights and Responsibilities of the Public Schools and Public School Students, filed November 23, 1977;**  
**SBE Regulation 81-3, Rights and Responsibilities of the Public Schools and Public School Students, filed June 15, 1981;**  
**Amendment 1 to SBE Regulation 81-3, Rights and Responsibilities of the Public Schools and Public School Students, filed October 2, 1995.**

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