

POLICY SERVICES

ADVISORY

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CONTENTS

Policy Advisory No. 166 EBC - Emergencies
..... EBC-RB - Emergencies

Policy Advisory No. 167 GBEB - Staff Conduct

Policy Advisory No. 168 GCB - Professional Staff Contracts and Compensation

Policy Advisory No. 169 GCCF - Sabbatical Leave

Policy Advisory No. 170 GCF - Professional Staff Hiring

Policy Advisory No. 171 GDF - Support Staff Hiring

Policy Advisory No. 172 GCFC - Professional Staff Certification and Credentialing Requirements

Policy Advisory No. 173 GDFA - Support Staff Certification and Credentialing Requirements

Policy Advisory No. 174 GCMF - Professional Staff Duties and Responsibilities

Policy Advisory No. 175 GCO-R - Evaluation of Professional Staff Members

Policy Advisory No. 176GCQ - Professional Staff Termination of Employment

Policy Advisory No. 177 GCQC - Resignation of Professional Staff Members

Policy Advisory No. 178GCA - Professional Staff Positions

Policy Advisory No. 179 GDQF - Discipline, Suspension and Termination of Support Staff Members

Policy Advisory No. 180 GDB - Support Staff Contracts and Compensation

Policy Advisory No. 181GDQD - Discipline, Suspension, and Termination of Support Staff Members

Policy Advisory No. 182IJOC - School Volunteers

Policy Advisory No. 183IKF - Graduation Requirements

Policy Advisory Discussion

The following advisories are recommended for adoption by Policy Services to provide direction on the implementation of recently adopted and revised New Mexico Statutes Annotated (NMSA). The effective date for the NMSA changes indicated will be 90 days after the adjournment of the legislature enacting them, unless a later date is specified. Adjournment was March 16, 2019, and the effective date of most legislation will be Friday June 14. Policy Services has reviewed the bills that have been signed by the Governor and submits the following as the first group of advisories for your consideration. Several of the bills still require the Public Education Department (PED) to prepare regulatory documents. Those requiring PED action before Policy Services can prepare policy advisories are SB 48 on diabetes management, HB 129 on arming school security officers, SB 288 on bullying prevention, and SB 398 on screening for Dyslexia.

HB 236 on the new Attendance for Success Act, will require time for Policy Services to analyze the changes to multiple policies and procedures currently in place. SB 204 on allowing medical cannabis in schools, will also require further review before providing advice on implementation.

Policy Advisory No. 166 EBC - Emergencies. Senate Bill 147 related to safety establishes new requirements for school evacuation and active shooter drills. Policy EBC is modified to identify the active shooter response among the named threats. The list is not all inclusive. Types of emergency drills to be held, when held and how often, is modified by this bill. Those changes are incorporated in the regulation EBC-RB as direction to the staff.

Policy Advisory No. 167 GBEB - Staff Conduct. Among the several changes which are required by House Bill 431 clarifying terms and provisions of the personnel act are changes 22-10A-5 to require investigation and reporting of ethical misconduct by any employee and reporting of sexual assault or sexual abuse by employees, volunteers, contractors or contractor's employees to law enforcement.. To establish this as policy, the pertinent phraseology is added to policy GBEB on Staff Conduct along with the citation of the NMSA 22-10A-5.

Policy Advisory No. 168 GCB - Professional Staff Positions. Among the other changes which are required by House Bill 431 clarifying terms and provisions of the personnel act are the changes to 22-10A-21 defining employment contracts and their duration. The first change to section B indicates that the contract is between the Superintendent and the licensed school employee. The second change relates to three year contracts. Policy Services finds these changes to be confusing in light of the previous statutory statements that the contracts were between the school board and certificated employees and that they are now between the Superintendent and the licensed school employee. House Bill 431 goes on to state that a three year contract for licensed school employees is allowed at the discretion of the governing authority. Hopefully the Superintendent's role in the contractual issue will be interpreted by the courts to be as an agency role rather than as the contractor. Because it is Policy Services understanding that the governing authority of a school is the school board, as found in several education statutes and court interpretations of statute. These changes could result in some contentious contract disputes. Please note the change made to Policy GCB to establish the statutory modification..

Policy Advisory No. 169 GCCF - Sabbatical Leave. Another change in House Bill 431 affects the definition of sabbatical leave by removing local school board in 22-10A-2 (I), leaving governing authority as the approving body. The change to the policy GCCF is simply the addition of the statutory citation so that reference is made to the requirement that sabbatical leave study or travel approval must relate to the staff member's duties and be of direct benefit to the instructional program. This is a higher standard than some districts would apply. Please note that since this policy is not often implemented because of cost, it is maintained as a reference so that districts may review the law related to sabbatical leaves if this is needed.

Policy Advisory No. 170 GCF - Professional Staff Hiring. As a housekeeping matter, Policy Services noted that this general hiring policy did not reference the fingerprint requirement for criminal history background checks sometimes necessary for new employees. Therefore a bullet has been added that requires them as necessary. House Bill 431 makes a change to 22-10A- 23 that is very subtle, but unless noted by the school district could create problems with the notice, acceptance and rejection of employment contracts by licensed school employees. A section titled "Reemployment Contract" as a side heading bold type was added to clarify the change. The change in statute is that the reemployment or termination notice must be served on the employee fifteen (15) days before the end of the school year, rather than as formerly required by the end of the school year. The execution of the written contract is between the

Superintendent and the licensed school employees. The statute also gives notice that a binding employment contract between the Superintendent and the licensed school employee is created upon delivery of written acceptance of notice of reemployment from the employee. Refer to advisory 168 GCB for comments on this issue.

Policy Advisory No. 171 GDF - Support Staff Hiring. As with hiring of professional staff, Policy Services added a sentence requiring support staff to provide fingerprints in this policy to complete the general requirements for hiring.

Policy Advisory No. 172 GCFC - Professional Staff Certification and Credentialing Requirements. House Bill 431 modified 22-10A-5 to require the public school pay the cost of obtaining the criminal history records of all applicants, if offered employment, and makes a minor correction to where the requirement for others to be fingerprinted applies. This is noted in the minor changes to the first paragraph of policy GCFC.

Policy Advisory No. 173 GDFA - Support Staff Certification and Credentialing Requirements. House Bill 431 also modified 22-10A-5 to require that the public school pay for the criminal history report from fingerprinting an applicant offered employment as a support staff member. It further changes the requirement that a volunteer, contractor or contractor's employee is required to pay for a criminal history report by changing the "shall" to a "may". This means that the district may choose to absorb the cost for one or more of those categories of persons. If the district does decide to pay for the fingerprint report for one of these categories, please specify that all of that particular category will be covered by the directive.

Policy Advisory No. 174 GCMF - Professional Staff Duties and Responsibilities. The addition to this policy is a further housekeeping action to add the duties of a licensed employee to policy as found in House Bill 431 which amended 22-10A-3.

Policy Advisory No. 175 GCO-R - Evaluation of Professional Staff Members. House Bill 227 amended 22-10A-19 requiring the local Superintendent to adopt guidelines and procedures for the performance evaluation process. This must include the effect of the use of personal and sick leave in accord with district policy. This has been added in the procedural steps in the process of evaluation for licensed teachers in the Superintendent's regulation GCO-R.

Policy Advisory No. 176 GCQ - Professional Staff Termination of Employment. GCQ has been changed to reflect the amendment of 22-10a-22 by House Bill 431 with regard to the notice of termination of professional employees fifteen (15) working days prior to the last day of the school year rather than the previous "on or before the last day of the school year". To differentiate this policy from the discipline policy GCQF, Policy Services has subtitled it Notice.

Policy Advisory No. 177 GCQC - Resignation of Professional Staff Members. This policy is modified to indicate the amendment to 22-10A-23 by House Bill 431. The notice of termination

of professional employees is to be made fifteen (15) working days prior to the last day of the school year. This changes the previous wording "on or before the last day of the school year".

Policy Advisory No. 178 GCA - Professional Staff Positions. For purposes of separating policy nomenclature and applying titles to policy, it is necessary to identify the differences between Professional and Support staff. 22-1-2 defines "licensed school employee," for purpose of the school code as meaning teachers, school administrators and instructional support providers. 22-10A-2, as amended by House Bill 231, indicates in E; "instructional support provider" means a person who is employed to support the instructional program of a public school, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf and diagnostician. Since the policies are divided between Professional and Support Staff it would appear that the best way to differentiate between these terms is to give the Professional determination to "licensed school employees" and the Support designation to non-licensed school employees. Policy Services has therefore concluded that the definition of a professional staff member needs to be included in Policy GCA both for the purpose of this policy and also for the purpose of establishing which employee is covered by the titled policies.

Policy Advisory No. 179 GCQF - Discipline, Suspension, Termination and Discharge of Professional Staff Members. Both House Bill 47 and 431 require changes to Policy GCQF. HB 431 revises sections 22-10A-2, 3, 5, 21, 22, 23, 26, 27, 28, and 29 of the act clarifying terms both in new and old definitions and processes in the School Personnel Act. The changes clarify the time when a licensed employee is to be considered to be employed for three consecutive years will be upon accepting in writing a notice of reemployment for a third consecutive year. The modified termination procedures for both licensed and non-licensed employees, changes some notice requirement dates and some periods. HB 47 revised section 22-10A-24 NMSA of the School Personnel Act and reduced the probationary period for nonlicensed school employees and licensed educational assistants to one year. These changes and some of the definition changes caused a number of minor modifications to Policy GCQF and GDQD.

Policy Advisory No. 180 GDB - Support Staff Contracts and Compensation. Policy Services made a minor modification to the definition of a support staff member as discussed in Advisory 178 on policy GCA. For explanation of the modification see Policy Advisory No. 178 GCA above.

Policy Advisory No. 181 GDQD - Discipline, Suspension, and Termination of Support Staff Members. The statutory changes of House Bill 47 and 431 apply equally in Policy GDQD as they do in GCQF to the termination of non-licensed staff. Additionally, Policy Service chose to omit the term 'Discharge' from the policy title GDQD since that term is defined as applicable only to licensed school employees (professional staff). See discussion of advisory 179 policy GCQF for additional information.

Policy Advisory No. 182 IJOC - School Volunteers. House Bill 431 amended 22-10A-5 of the School Personnel Act. This changes the requirement that the volunteer pay the cost of obtaining a background check. This allows the district to make the choice as to whether the fingerprint criminal record background check will be paid by the volunteer or the district. As noted in advisory 173 policy GDFA, districts should be consistent in application of the choice, that is critical to not being arbitrary and capricious at law.

Policy Advisory No. 183 IKF - Graduation Requirements. House Bill 664 amending 22-13-1.1 (J-1, 2, 3) allows public education department-approved work-based training or career and technical education courses that meets state academic content and performance standards in English, mathematics, or science to qualify as one of the requirements needed for graduation in each of these areas. It was added to the policy by noting its application to the particular units by use of three (3) asterisks (***) referencing an annotation below the listed requirements.

Materials of a legal nature in support of these advisories may be found below. If you have any questions or requests please 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 if legal explanations are needed.

RELEVANT STATUTES, RULES AND CITATIONS

The Bills that are referenced in the advisories above make up an additional 50 pages in PDF format. Policy Services has chosen to provide a reference to the New Mexico Legislature site where these bills can be found rather than include them in the text which the district will download. Please use the reference below in an internet browser to get to the site and then select the 2019 legislative session to be able to review any and all of the Bills sited in the advisories.

https://nmlegis.gov/Legislation/BillFinder/Governor_Actions

Advisory 166

EMERGENCIES

Disaster can strike at any time and cause wide-spread damage and injury.

Such disasters can be created by humans or the result of natural causes and can occur with little, if any, warning. Thus, it is the intent of the Board to create a systematic means to minimize the negative impact of any disaster on students, employees, visitors and others while on District property or at school-sponsored events. To this end, the Superintendent, with staff and community input, shall develop a tactical emergency response plan which will include, but not be limited to the threat of:

- Chemical, biological and nuclear incidents.
- Bomb threats.
- Building collapse.
- Hostage situations.
- Conditions of nature.
- Arson.
- Civil disturbances.
- Explosions.
- Vehicular accidents.
- Active Shooter.

A tactical emergency response plan is a safe school plan that details risk assessments and establishes the plans or procedures to manage an emergency event after it has occurred and includes, but is not limited to, emergency routes and staff assignments as they relate to immediate actions, delayed actions, mitigation actions, facility evacuations and facility reentry. The plan shall clearly outline the requirements and discretion afforded each school with regard to the administration of the plan. The plans will also designate specific emergency drills to be conducted. The plan shall be presented to the Board for approval but shall not be released to the public due to the student wellness and safety issues related to the information.

Adopted: date of manual adoption

LEGAL REF.: 22-13-14 NMSA
59A-52-1 NMSA
6.12.6.7 NMAC
6.12.6.8 NMAC
6.29.1.9 NMAC

CROSS REF.: JL - Student Wellness

REGULATION

REGULATION

EMERGENCIES

(Emergency Drills)

Emergency drills will be scheduled and conducted at least once each week during the first four (4) weeks of the school year ~~and at least once each month during the school year by the school administrator.~~ During the first four weeks of the school year, each school shall conduct one shelter in place drill that includes preparation to respond to an active shooter, one evacuation drill and two fire drills During the rest of the school year, each school shall conduct at least four more emergency drills, at least two of which shall be fire drills. The purpose of a drill is to train students, under staff direction, to move safely, quickly, and quietly from any location within the building to a designated position or location. ~~Two (2) drills shall be shelter in place drills, one (1) shall be an evacuation drill and the remainder shall be fire drills.~~

The following rules and procedures will be complied with in all schools:

- Evacuation routes will be posted in each room. These routes will indicate the primary and alternate exits and the evacuation area to which the student should proceed upon leaving the building. During the first week of the school year, rules for emergency evacuation will be discussed with each class using the room.
- A distinct alarm signal will be used for emergency drills only; another signal will be established by the principal for return to class.
- No student or staff member is to remain in the building during emergency drills.
- All persons should exit according to their posted evacuation routes and proceed to assigned locations a safe distance away from the building.
- It is each student's responsibility to move quickly, quietly, and in an orderly manner through the assigned exit to the assigned evacuation area.
- The teacher will be responsible for:
 - Maintaining order during the evacuation.
 - Taking the grade book and checking roll when the class is in the assigned evacuation area. The name of any student not accounted for will be reported immediately to the principal, who shall promptly notify the Superintendent.
- A report stating the date and time that the drill was conducted, and the time required to complete the evacuation will be made.

The fire department (if one [1] is maintained within the District boundaries) shall be requested to attend for instruction and constructive criticism.

Advisory 167

STAFF CONDUCT**(Standards of Professional Conduct)****Preamble**

We, licensed New Mexico educators acknowledge that ethical values in our schools cannot exist without ethical leadership. It is our ultimate goal to educate children so that they may become productive citizens; we understand that our guidance and ability to provide choices has a profound effect on reaching this goal. In affording students and each other choices, we agree to consider the consequence of each choice, the moral value best exemplified by the recommended choice, and our position on the choice if it were applied to us. These principles apply equally to all licensed educators in all schools except where they are uniquely applicable to public schools or where they conflict with principles of religious freedom.

Moral values are to ethical leadership what years of experience are to a successful educator. The former sets the stage for success of the latter. Abstract principles that espouse excellence do not easily equate into simple behavioral maxims. We are certain that some foundational concepts can be embraced because they truly celebrate desirable moral values. These concepts are: respect for one's self and others, honesty and openness, the delicate balance between absolute freedom and safety, the equally delicate balance between confidentiality and the right to know, equality of opportunity, fairness to all, and personal integrity.

In the final analysis it is our consistent ethical leadership that wins the most allies and produces the best results. Not only does this code highlight our professional responsibilities, but also it stimulates us to discuss the professional implications of our ethical choices and ethical recommendations, causes us to assess and reassess our application of moral values, and sets forth concrete behaviors appropriate for education professionals. We are committed to this code and understand that it provides minimally accepted standards of professional conduct in education.

Standard I – Duty to the student. We endeavor to stimulate students to think and to learn while at the same time we seek to protect them from any harm. Ethical leadership requires licensed educators to teach not only by use of pedagogical tools, but also by consistent and justifiable personal example. To satisfy this obligation, we:

- shall, in compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g, 34C.F.R. Part 99), the Individuals with Disabilities Education Act (20 U.S.C. Section 1401 *et seq.*, 34 C.F.R. Part 80), the Mental Health and Developmental Disabilities Code (Section 43-1-19, NMSA 1978), the Inspection of Public Records Act (Section 14-2-1

et seq., NMSA 1978), the Public School Code (Section 22-1-8, NMSA 1978), and the Children's Code (Sections 32A-2-32, 32A-4-3, NMSA 1978), withhold confidential student records or information about a student or his/her personal and family life unless release of information is allowed, permitted by the student's parent(s)/legal guardian, or required by law;

- shall not discriminate or permit students within our control, supervision or responsibility to discriminate against any other student on the basis of race, color, national origin, ethnicity, sex, sexual orientation, disability, religion, or serious medical condition;
- shall avoid using our positions as licensed school employees to exploit or unduly influence a student into engaging in an illegal act, immoral act, or any other behavior that would subject a licensed school employee or student to discipline for misconduct whether or not the student actually engages in the behavior;
- shall tutor students only in accordance with local board policies, if any, only after written permission from the student's parent(s)/legal guardian, and only at a place or time approved by the local school and/or the student's parent(s)/legal guardian;
- shall not give a gift to any one (1) student unless all students situated similarly receive or are offered gifts of equal value for the same reason;
- shall not lend a student money except in clear and occasional circumstances, such as where a student may go without food or beverage or be unable to participate in a school activity without financial assistance;
- shall not have inappropriate contact with any student, whether or not on school property, which includes but is not limited to:
 - all forms of sexual touching, sexual relations or romantic relations;
 - inappropriate touching which is any physical touching, embracing, petting, hand-holding, or kissing that is unwelcome by the student or is otherwise inappropriate given the age, sex and maturity of the student;
 - any open displays of affection toward mostly-boys or mostly-girls; and
 - offering or giving a ride to a student unless absolutely unavoidable as where a student has missed his/her usual transportation and is unable to make reasonable substitute arrangements;
- shall not interfere with a student's right to a public education by sexually harassing a student or permitting students within our control, supervision or responsibility to sexually harass any other student, which prohibited behavior includes:
 - making any sexual advances, requests for sexual favors, repeated sexual references, any name calling by means of sexual references or references directed at gender-specific students, any other verbal or physical conduct of a physical

nature with a student even where the licensed educator believes the student consents or the student actually initiates the activity, and any display/distribution of sexually oriented materials where students can see them; and

- creating an intimidating, hostile or offensive work/school environment by at a minimum engaging in any of the prohibited behaviors set forth at Paragraph (7) or Subparagraph (a) of Paragraph (8), Subsection B of 6.60.9.9 NMAC, above.

Standard II – Duty to the profession. The education profession has been vested by the public with an awesome trust and responsibility. To live up to that lofty expectation, we must continually engender public confidence in the integrity of our profession, and must strive consistently in educating the children of New Mexico, all of whom will one-day shape the future. To satisfy this obligation, we:

- shall not make a false or misleading statement or fail to disclose a material fact in any application for educational employment or licensure;
- shall not orally or in writing misrepresent our professional qualifications;
- shall not assist persons into educational employment whom we know to be unqualified in respect to their character, education, or employment history;
- shall not make a false or misleading statement concerning the qualifications of anyone in or desiring employment in education;
- shall not permit or assist unqualified or unauthorized persons to engage in teaching or other employment within a school;
- shall not disclose personal, medical, or other confidential information about other educational colleagues to anyone unless disclosure is required or authorized by law;
- shall not knowingly make false or derogatory personal comments about an educational colleague, although first amendment protected comments on or off campus are not prohibited;
- shall not accept any gratuity, gift, meal, discount, entertainment, hospitality, loan, forbearance, favor, or other item having monetary value whose market value exceeds one hundred dollars (\$100), excluding approved educational awards, honoraria, plaques, trophies, and prizes;
- shall avoid conduct connected with official duties that is unfair, improper, illegal or gives the appearance of being improper or illegal;
- shall not sexually harass any school employee, any school visitor or anyone else we might encounter in the course of our official duties, which includes:

- making any sexual advances, requests for sexual favors, repeated sexual references, and name calling by means of sexual references or references directed at any gender-specific individuals named above;
 - making any other verbal gesture or physical conduct with any of the above-named individuals even where the licensed educator believes they consent or they actually initiate the activity;
 - displaying or distributing any sexually oriented materials where the above-named individuals can see them; and
 - creating an intimidating, hostile, or offensive work/school environment by engaging in any of the prohibited behaviors set forth at Subparagraphs (a), (b) or (c), Paragraph (10), Subsection C of 6.60.9.9 NMAC, above;
- shall educate oneself at least annually about avoiding sexual harassment by either attending periodic training, reviewing sexual harassment literature or the Equal Employment Opportunity Commission (EEOC) guidelines found at Title 29 Code of Federal Regulations Part 1604 (29 C.F.R. Section 1604.1 *et seq.*) or contacting appropriate school human resources personnel;
 - shall not engage in inappropriate displays of affection, even with consenting adults, while on school property or during school events off campus;
 - shall not without permission of a supervisor use public school property to conduct personal business or our personal affairs;
 - shall use educational facilities and property only for educational purposes or purposes for which they are intended consistent with applicable policy, law and regulation;
 - shall not discriminate against any school employee, or any other person with whom we have any dealings or contact in the course of our official duties, on the basis of race, color, national origin, ethnicity, sex, sexual orientation, disability, religion, or serious medical condition;
 - shall not engage in any outside employment:
 - the performance of which conflicts with our public school duties, such as where a licensed educator takes a private job that would require performance in the very school district where he/she is employed;
 - where we use confidential/privileged information obtained from our public school employment as part or all of our private employment duties; and
 - that impairs our physical ability to perform our school duties;
 - shall not, with the intent to conceal/confuse a fact, change or alter any writing or encourage anyone else to change or alter any document:

- in connection with our official school duties;
- in connection with another licensed person's official school duties;
- in connection with any standardized or non-standardized testing;
- in connection with any school application or disclosure process; and
- in connection with any writing submitted to the public education department related to our initial or continued licensure, including endorsements;
- shall not in connection with any State Board-approved teacher test knowingly make any misrepresentations about one's identity, or engage in any false or deceptive acts of test-taking or test-registering;
- shall not engage in any conduct or make any statement:
 - that would breach the security of any standardized or non-standardized tests;
 - that would ignore administering portions or the entirety of any standardized or non-standardized testing instructions;
 - that would give students an unfair advantage in taking a standardized or non-standardized test;
 - that would give a particular school or a particular classroom an unfair advantage in taking a standardized or non-standardized test; and
 - that would assist students in obtaining services or benefits for which they do not qualify or are not entitled;
- shall not, when on school property or off campus while representing the school or attending a school function, engage in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the peace.
- shall not hold, or continue to hold, employment for which educator licensure or certification is required when the individual knew, should have known or is informed by the State Public Education Department (PED), that the individual does not hold the required credentials; and
- shall not use school information technology equipment, hardware, software or internet access to view, download, display, store or print pornographic images or advertisements, nude images, or sexually explicit depictions or language;
- shall not engage in unprofessional conduct, which conduct shall include but not be limited to the following:
 - striking, assaulting or restraining a student for no valid reason;

- using any written or spoken words in public schools or at school events that are inflammatory, derogatory or otherwise demonstrate a bias against a person or group, on the basis of their race, religion, culture, ethnicity, sexual preference, sexuality or physical disability;
 - bringing firearms onto school property or possessing them on school property, except with proper authorization;
 - possessing or consuming alcohol beverages at school;
 - possessing or using illegal drugs;
 - being under the influence of alcohol or illegal drugs at school;
 - actively obstructing an investigation into the possible unethical or illegal conduct of a school employee; and
 - engaging in favoritism or preferential treatment toward any school employee or applicant in regards to that individual's hiring, discipline, terms of employment, working conditions or work performance due to that individual's familial relationship with the licensee;
- shall report any knowledge of inappropriate contact, as provided by Paragraph (7) of Subsection B of 6.60.9.9 NMAC with a student or other school employee to the local school authority within thirty (30) days of obtaining such knowledge.

Sanctions

The standards of professional conduct establish minimal standards of accepted professional conduct with which all educators and administrators are required to comply. Therefore, the Secretary of Education through the professional licensure unit ("licensure unit") of the public education department (PED), may revoke or suspend the licensure of any person, or may deny applications for licensure or relicensure to any person, who is within the scope of this regulation and who after hearing is found to have failed to comply with one (1) or more of the enumerated provisions of the standards of professional conduct set forth in Section 6.60.9.9 NMAC, exclusive of the preamble.

In General

All employees of the District are expected to conduct themselves in a manner consistent with effective and orderly education and to protect students and District property. No employee shall, by action or inaction, interfere with or disrupt any District activity or encourage any such disruption. No employee, other than one who has obtained authorization from the appropriate school administrator, shall carry or possess a weapon on school grounds. All employees shall at all times attempt to maintain order, abide by the policies, rules, and regulations of the District, and carry out all applicable orders issued by the Superintendent.

Investigation and reporting of Alleged Ethical Misconduct

The superintendent shall investigate all allegations of ethical misconduct about any school employee who resigns, is being discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of ethical misconduct by a licensed school employee, the superintendent shall report the identity of the licensed school employee and attendant circumstances of the ethical misconduct on a standardized form to the department and the licensed school employee within thirty days following the separation from employment or immediately if knowledge of the ethical misconduct is sexual harassment or sexual abuse of an adult or child. Copies of that form shall not be maintained in the school employee's personnel file.

The superintendent shall also report allegations of sexual assault or sexual abuse involving any school employee, volunteer, contractor or a contractor's employee to the appropriate law enforcement agency.

No agreement between a departing school employee and the governing authority or superintendent shall diminish or eliminate the responsibility of investigating and reporting the alleged ethical misconduct to the department or, if legally mandated, to law enforcement, and any such agreement to the contrary is void.

A persons good faith reporting of conduct indicated above will not result in liability for civil damages. The person accused shall have the right to sue for any damages as a result of negligent or intentional reporting of inaccurate information or the disclosure of any information to unauthorized persons.

Adopted: date of manual adoption

LEGAL REF.: 22-5-4.4 NMSA (1978)
22-10A-5 NMSA (1978)
6.60.9.9 NMAC
6.68.2.1 NMAC *et seq.*
6.68.3.1 NMAC *et seq.*

CROSS REF.: GCF - Professional Staff Hiring
JIC - Student Conduct
JK - Student Discipline
KFA - Public Conduct on School Property

Advisory 168

**PROFESSIONAL STAFF
CONTRACTS AND COMPENSATION**

All employment contracts between ~~local school boards and certificated school personnel and between governing authorities of state agencies and certificated school instructors~~ superintendents and licensed school employees shall be in writing on forms approved by the department. These forms shall contain and specify the term of service, the salary to be paid, the method of payment, the causes for termination of the contract and other provisions required by the regulations of the Secretary of Public Education.

All employment contracts between ~~local school boards and certificated school personnel and between governing authorities of state agencies and certificated school instructors~~ superintendents and licensed school employees shall be for a period of one (1) school year except:

- contracts for less than one (1) school year are permitted to fill personnel vacancies which occur during the school year;
- contracts for the remainder of a school year are permitted to staff programs when the availability of funds for the programs is not known until after the beginning of the school year;
- contracts for less than one (1) school year are permitted to staff summer school programs and to staff federally funded programs in which the federally approved programs are specified to be conducted for less than one (1) school year;
- contracts not to exceed three (3) years are ~~permitted for administrators in public schools who are engaged in administrative functions for more than one half (1/2) of their employment time~~ allowed at the discretion of the governing authority for superintendents; and
- contracts not to exceed three (3) years are ~~permitted~~ allowed at the discretion of the ~~Local School Board for Certificated School Instructors in Public Schools~~ governing authority for licensed school employees in public schools who have been employed in the School District for three (3) consecutive school years.

Except as provided in Section 22-10A-22 NMSA 1978, a person employed by contract pursuant to this section has no legitimate objective expectancy of reemployment, and no contract

entered into pursuant to this section shall be construed as an implied promise of continued employment pursuant to a subsequent contract.

Salaries in the District will be differentiated in relationship to duties and responsibilities.

The Superintendent will provide recommendations on salaries and fringe benefits to the Board each year.

After receipt of the Superintendent's recommendations, the Board will annually establish the salaries and benefits for all employees within the budgetary constraints of the District.

Adopted: date of manual adoption

LEGAL REF.: 22-10A-10 NMSA (1978)
 22-10A-21 NMSA (1978)
 22-10A-22 NMSA (1978)
 6.66.2.8 NMAC
 6.66.3.8 NMAC

Advisory 169

SABBATICAL LEAVE

Upon approval as a part of a compensation plan the Board may grant sabbatical leave to licensed teaching and administrative personnel for a maximum of one (1) year in accordance with 22-10A-2 (I), 22-10A-35 through 22-10A-38 NMSA 1978, and 6.66.4.8 NMAC

Adopted: date of manual adoption

LEGAL REF.: 22-10A-2 NMSA
22-10A-35 through 22-10A-38 NMSA (1978)
6.66.4.8 NMAC

Advisory 170

PROFESSIONAL STAFF HIRING

It shall be the policy of the District to employ and retain the best qualified personnel.

The Board adopts the following general criteria, which shall be utilized in the selection process for initial employment:

- There will be no discrimination in the hiring process due to race, color, religion, sex, sexual orientation, age, national origin, or disability of an otherwise qualified individual.
- A candidate for secondary school teaching should have a major, minor, or equivalent in the candidate's teaching field. An elementary school candidate should have a major or equivalent in elementary education or in the special area of assignment.
- Candidates for all teaching positions shall be able to deliver quality instruction.
- Each candidate shall provide evidence of meeting state requirements for certification. • Each candidate shall provide evidence of meeting state requirements for certification.
- Each candidate shall be required to provide fingerprint cards or electronic fingerprints upon being offered employment for purposes of obtaining a criminal history background record before finalization of employment.
- A "background investigation" - consisting of communication with the applicant's (or employee's) former employer that concerns education, training, experience, qualifications, and job performance for the purpose of evaluation for employment - shall be conducted on each individual to be considered for a recommendation of employment. Forms developed for this purpose are to be used.

Any employee's misstatement of fact that is material to qualifications for employment or the determination of salary shall be considered by the governing authority to constitute grounds for dismissal.

All offers of employment are contingent upon the satisfactory completion of background investigations.

Reemployment Contract

Each licensed teaching employee shall deliver an acceptance or rejection of reemployment to the Board within fifteen (15) days from the following:

- The date written notice of reemployment is served upon the person; or
- The last day of the school year when no written notice of reemployment or termination is served upon the licensed school employee on or before fifteen (15) working days prior to the last day of the school year.

Delivery of the written acceptance of reemployment by a licensed school employee creates a binding employment contract between the licensed school employee and the superintendent until the parties enter into a formal written employment contract. Written employment contracts between the superintendent and licensed school employees shall be executed by the parties not later than ten days before the first day of a school year.

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

Adopted: date of manual adoption

LEGAL REF.: 22-10A-5 NMSA (1978)
28-1-2 NMSA *et seq.*

Advisory 171

SUPPORT STAFF HIRING

It shall be the policy of the District to employ and retain the best qualified personnel. This will be accomplished by giving careful consideration to qualifications and by providing competitive salaries within the financial capabilities of the District, adequate facilities, and good working conditions. Volunteers are to have background checks in accord with this policy.

Recruitment of support staff personnel is the responsibility of the Superintendent. Other members of the administration and supervisory staff will assist as responsibilities are delegated by the Superintendent.

The Board adopts the following general criteria and procedures, which shall be utilized in the selection process for initial employment:

- There will be no discrimination in the hiring process due to race, color, religion, sex, sexual orientation, age, national origin, or disability of an otherwise qualified individual.
- Candidates for all positions shall be able to perform the duties of their position job descriptions.
- Each applicant shall be required to provide fingerprint cards or electronic fingerprints upon being offered employment for purposes of obtaining a criminal history background record before finalization of employment.
- Each candidate shall be requested to complete a consent-and-release form regarding conduct of a background investigation.
- A "background investigation" - consisting of communication with the applicant's (or employee's) former employer that concerns education, training, experience, qualifications, and job performance for the purpose of evaluation for employment - shall be conducted on each individual to be considered for a recommendation of employment. Forms developed for this purpose are to be used.

In addition to the requirements in this policy and those of the fingerprint policy which follows, the District shall follow 6.41.4.9 NMAC M through S for the purposes indicated below. That part of the New Mexico Administrative Code shall be incorporated in this policy by reference.

- Commercial Driver's License (CDL) pre-employment screening.

- Returning CDL pre-employment screening.
- School owned activity driver pre-employment screening.
- School bus assistant and substitute school bus assistant pre-employment screening.
- Continuing standards for drivers.
- Pre-employment documentation maintenance (records maintenance).

Any employee's misstatement of fact that is material to qualifications for employment or the determination of salary shall be considered to constitute grounds for termination.

All offers of employment are contingent upon the satisfactory completion of background investigations.

Adopted: date of manual adoption

LEGAL REF.: 22-10A-5 NMSA (1978)
28-2-1 *et seq.* NMSA
6.41.4.9 NMAC

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

Advisory 172

**PROFESSIONAL STAFF CERTIFICATION
AND CREDENTIALING REQUIREMENTS**

(Fingerprinting Requirements)

New Hires

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

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

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

Reasons for a decision not to employ an individual based upon conviction of any indicated crime or misdemeanor involving moral turpitude shall be provided to the candidate. An

appeal of denial, suspension or revocation of employment based upon the Criminal Offender Employment Act may be requested in accord with the grievance procedure provided in policy.

A person not directly involved in the employment decision affecting the specific applicant shall not be permitted unauthorized access to criminal history record information or background information. All fingerprint or criminal history records are to be confidential records and are to be maintained as personnel records in accord with the "Rights to inspect public records, exceptions".

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

Adopted: date of manual adoption

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

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

Advisory 173

**SUPPORT STAFF CERTIFICATION AND
CREDENTIALING REQUIREMENTS**

(Fingerprinting Requirements)

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

The candidate's fingerprints shall be submitted, along with the form required immediately upon being selected as a finalist for possible employment. The form shall be considered a part of the application for employment. Convictions of felonies or misdemeanor involving moral turpitude if directly related to employment which are contained in the criminal history investigation record shall be used to deny, suspend or revoke employment in accordance with the Criminal Offender Employment Act. However, if the conviction does not directly relate to employment, completion of probation or parole supervision or expiration of a period of three (3) years after final discharge or release from imprisonment without subsequent conviction shall create a presumption of sufficient rehabilitation. Other information contained in the investigation record, if supported by independent evidence, may also form the basis for the employment decisions for good and just cause. A candidate's conviction of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse regardless of rehabilitation shall warrant denial, suspension or revocation of employment. Records of arrest not followed by conviction or misdemeanors NOT involving moral turpitude may not be used, distributed or disseminated regarding public employment.

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

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

The administration may also conduct a background investigation of current employees if it becomes aware of facts, circumstances, or conduct that indicate(s) an individualized reasonable

suspicion that undisclosed aspects of the employee's background might disqualify him or her to continue in employment with the District.

A person not directly involved in the employment decision affecting the specific applicant shall not be permitted unauthorized access to criminal history record information or background information. All fingerprint or criminal history records are to be confidential records and are to be maintained as personnel records in accord with the "Rights to inspect public records, exceptions".

Adopted: date of manual adoption

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

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

Advisory 174

**PROFESSIONAL STAFF DUTIES
AND RESPONSIBILITIES**

Each licensed school employee shall:

- enforce all laws and rules applicable to the employee's public school; if teaching, teach the prescribed courses of instruction;
- if teaching, teach the prescribed courses of instruction;
- exercise supervision over students on public school premises and while the students are under the control of the public school; and
- furnish reports as required.

A teacher shall not use sectarian or denominational books or teach any sectarian doctrines or conduct religious exercises.

Any person violating this prohibition by teaching sectarian doctrine in a public school shall be immediately discharged from further employment with a school district.

Adopted: date of manual adoption

LEGAL REF.: 22-10A-3 NMSA
22-10A-27 through 22-10A-31 NMSA (1978)
22-13-15 NMSA (1978)

Advisory 175

REGULATION **REGULATION**

**EVALUATION OF PROFESSIONAL
STAFF MEMBERS**

Purpose

The purpose of evaluation shall be the improvement of performance. Such a process, to achieve the greater measure of success, shall be predicated on the assumption that the evaluation will be a cooperative procedure, with the evaluator and the evaluatee having full knowledge of the criteria, process, and results.

The following statements give more specific purposes for evaluation:

- Evaluations determine how well the objectives held by the school are being carried out. The success of the educational program is dependent upon the quality of classroom instruction, supervision, and administration.
- Evaluations provide the basis for motivation and for self-improvement, permitting personnel to be aware of their strengths and weaknesses in order to improve.
- Evaluations provide a basis for planning in-service training and supervisory activities. Such activities can be most effective when they are based upon clear evidence of need as shown by evaluation studies.
- Evaluations provide the basis for administrative decisions. Such decisions may include the employment of personnel, their assignment, promotion, demotion, or termination.
- Evaluations aid in determining satisfactory or unsatisfactory performance.

Evaluators

The Superintendent shall designate the evaluators. The evaluator shall be responsible for the final written and official statement of evaluation, which shall be in writing, and a copy shall be transmitted to the certificated teacher within five (5) days after completion of the evaluation.

The District is responsible for an in-service training program for evaluators. This program shall incorporate classroom observation techniques, conference skills, and growth planning. Evaluators shall attend a training program to improve their evaluation, administrative and instructional leadership skills at least every two (2) years.

Licensed Teacher Evaluation

Classroom visitations by evaluator. Formal observations shall be spaced and of sufficient duration (minimum of *thirty [30]* uninterrupted minutes) so as to ensure that the evaluators have an opportunity to grasp an overall concept of a person's performance over a full schedule.

Formal observations are prearranged through initiation by either the observer or the teacher. Formal observations shall be defined as those that are written and provide an opportunity for a pre-observation conference and follow-up conference.

Informal observations may be made at the discretion of the administrator.

Procedural steps in the process of evaluation:

- At the beginning of the school year, the principal shall assign a mentor for all Level one teachers whose responsibilities shall be defined in a program established by the District in accord with statute and submitted to the Public Education Department as required.
- At the beginning of the school year, the principal shall meet with the school's faculty for the purpose of orienting the teachers to the total evaluation plan. A teachers use of personal leave and up to ten days sick leave shall not affect that teachers performance evaluation if used in accord with district policy. A low attendance score may be reflected in the evaluation if the teacher is determined to have used sick leave inconsistently with district policy.
- A professional development plan shall be devised by each teacher and provided to the evaluator on a schedule as determined by the evaluator.
- Observations in the classroom shall be completed.
- An opportunity for a conference shall precede and follow each formal observation-visitation.
- A written record shall be made of each formal observation, with a copy to the observed.
- The official evaluation, consisting of a minimum of two (2) formal observations, shall be reduced to writing and signed by both the teacher and the evaluator. The teacher's signature shall not mean concurrence. The teacher shall be allowed ten (10) days to write and submit any comments, which shall be attached to the evaluation.
- A copy of the written evaluation shall be transmitted to the teacher within five (5) days after completion of the evaluation, and a copy shall be retained for the principal's file. A third copy shall be placed in the teacher's personnel file and made available to authorized District officers and employees.
- All evaluations shall remain confidential.

Frequency of written evaluations. Evaluations shall be made at least two (2) times per year for Level one (1) teachers, and at least once per year for Level two (2) and three (3) teachers.

Evaluation schedule:

- *Level one (1) licensing:*
 - During the week of orientation, evaluation procedures shall be reviewed at each school. Any teacher who is hired after orientation week shall be individually oriented by the evaluator.
 - Prior to January 10, the first evaluation, including observations, written evaluation, and conference shall be completed. If unsatisfactory work performance is indicated pursuant to the evaluation a conference will be conducted and a plan prepared to allow correction of the work performance. Such information will be recorded in writing, signed by all parties present and provided to the person evaluated. (see 6.69.2.8 (B)(2) for refusal to sign)
 - Prior to April 15, a second evaluation shall be completed. If unsatisfactory work performance is indicated pursuant to the evaluation a conference will be conducted and a plan prepared specifying the areas for correction of the work performance, while noting any areas of improvement if improvement is required. An employee whose performance continues to be unsatisfactory shall be given a notice of unsatisfactory performance. The notice shall specify the nature of the inadequacy with such particularity as to furnish the teacher an opportunity to correct the inadequacies and overcome the grounds for the charge of inadequacy of work performance.
 - Prior to the last day of the school year, the Board shall authorize, as necessary, and send notice to employees who will be terminated. A copy of any evaluation(s) pertinent to the charges not to reemploy will be included in the written notice of intention not to reemploy.
 - This written notice of termination shall be delivered personally or sent by registered or certified mail with delivery by a time certain at least fourteen (14) days prior to the last day of the school year, to the teacher's place of residence, as recorded in the District's records. Within ten (10) days of a request from the employee, the Superintendent shall provide the reason(s) for the decision to terminate.
- *Level two (2) and three (3) licensing:*
 - Level two (2) and three (3) licensed employees shall be evaluated at least once each year. During the week of orientation, evaluation procedures shall be reviewed at each school. Any teacher who is hired after orientation week shall be individually oriented by the evaluator.

- Prior to March 15, the evaluation shall be completed. If less than satisfactory work performance and competency is indicated pursuant to the evaluation a conference will be conducted and a plan prepared specifying the areas for correction of the work performance, while noting any areas of improvement if improvement is required. An employee whose performance continues to be unsatisfactory shall be given a notice of unsatisfactory performance. A second conference shall be held at the time the notice is given. The notice shall specify the nature of the inadequacy with such particularity as to furnish the teacher an opportunity to correct the inadequacies and overcome the grounds for the charge of inadequacy of work performance.
- The principal shall establish a mentoring and peer intervention program as is seen necessary. Persons used for mentoring or intervention may be trained as evaluators. If the employee is unable to demonstrate satisfactory performance and competency by the end of a period of sixty (60) calendar days, the peer interveners may make a recommendation to the supervising administrator which may be termination. If the teacher does not demonstrate essential competency in a given school year, the School District shall provide the teacher with additional professional development and peer intervention during the following school year. If by the end of that school year the teacher fails to demonstrate essential competency, the District may choose not to contract with the teacher to teach in the classroom (terminate).
- At least fourteen (14) days prior to the last day of the school year, the governing authority shall authorize, as necessary, and send notice to employees who will be terminated. A copy of any evaluation(s) pertinent to the charges not to reemploy will be included in the written notice of termination.
- This written notice of termination shall be delivered personally or sent by registered or certified mail with delivery by a time certain prior to the last day of the school year, to the teacher's place of residence, as recorded in the District's records.
- Subject to the provisions of NMSA the Superintendent shall offer to each Level two (2) and Level three (3) teacher under contract of employment with the District for the current year a contract renewal for the next ensuing school year unless the ~~Local School Board~~ governing authority gives notice to the teacher of the intent not to offer a contract and to terminate the teacher as provided in NMSA.
- All provisions of the New Mexico Revised Statutes shall be complied with in the dismissal of continuing teachers.

Evaluation program. The specific format for the teacher evaluation system will be developed in compliance with Policy GCO, this regulation, NMSA, and NMAC under the leadership of the Superintendent.

Compliance with Public Education Department (PED) Regulation 6.69.4, Performance Evaluation System Requirements for Teachers, will be completed as specified in the teacher performance evaluation for three (3)-tiered licensure.

Evaluation of Licensed Administrators and Other Licensed Non-Teaching Employees

Continuous evaluation of all aspects of the total educational program, including student progress, personnel, curriculum, and facilities, will include a formal process of evaluating all administrators and licensed non-teaching employees. The purpose of this evaluation shall be the improvement of the quality of the educational program in the District and improvement of the performance of each employee. The evaluation will be a cooperative procedure, with the evaluator and the evaluatee having full knowledge of the criteria, process, and results.

The following statements give more specific purposes for evaluation:

- Evaluations determine how well the objectives held by the school and District are being carried out. The success of the educational program is dependent upon many factors, which include the quality supervision, and administration.
- Evaluations provide the basis for motivation and for self-improvement, permitting administrative personnel to be aware of strengths and weaknesses in order to improve the operation of the District's programs.

Procedural steps in the process of evaluation:

The specific format for the evaluation system for licensed administrators and licensed non-teaching employees will be developed under the leadership of the Superintendent and shall involve all principals and supervisors of principals in the development of evaluation criteria and data collection procedures. One (1) component of the evaluation tool for school administrators shall be evaluation by other school employees.

- At the beginning of the school year, the licensed administrators and licensed non-teaching employees will be oriented to the total evaluation plan.
- A professional development plan shall be devised by each employee and provided to the evaluator on a schedule as determined by the evaluator.
- Observations and data gathering shall be completed.
- The official evaluation shall be reduced to writing and signed by both the employee and the evaluator. The employee's signature shall not mean concurrence. The employee

shall be allowed ten (10) days to write and submit any comments, which shall be attached to the evaluation.

- A copy of the written evaluation shall be transmitted to the administrator within five (5) days after completion of the evaluation, and a copy shall be retained for the employee's file. A third copy shall be placed in the employee's personnel file and made available to authorized District officers and employees.
- All evaluations shall remain confidential.

Advisory 176

**PROFESSIONAL STAFF
TERMINATION OF EMPLOYMENT**

(Notice)

A notice of termination shall be a notice of intention not to reemploy for the ensuing school year.

~~Prior to the end of the contract year the District shall provide notice of termination~~ On or before fifteen (15) working days prior to the last day of the school year, the superintendent shall serve written notice of termination if such notice is determined to be in the best interest of the District.

Adopted: date of manual adoption

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

CROSS REF.: DKA - Payroll Procedures/Schedules
GCQF - Discipline, Suspension, and Termination of Professional Staff
Members

Advisory 177

**RESIGNATION OF PROFESSIONAL
STAFF MEMBERS**

Professional employees shall give thirty (30) calendar days written notice of intention to resign or request a release from contract. A release from an uncompleted contract may be granted contingent upon the availability of a well-qualified, licensed teacher as a replacement.

Each licensed teaching employee shall deliver an acceptance or rejection of reemployment to the ~~Board~~ governing authority within fifteen (15) days from the following:

- The date written notice of reemployment is served upon the person; or
- The last day of the school year when no written notice of reemployment or termination is served upon the ~~person~~ licensed school employee on or before fifteen (15) working days prior to the last day of the school year.

A teacher who resigns contrary to this policy shall be deemed to have committed an unprofessional act and shall be subject to the penalty as provided under New Mexico statutes and Secretary of Public Education regulations.

Adopted: date of manual adoption

LEGAL REF.: 22-10A-22 NMSA (1978)
 22-10A-23 NMSA (1978)
 6.60.9.9 NMAC
 6.66.2.8 NMAC
 6.66.3.8 NMAC

CROSS REF GCF- Professional Staff Hiring
 GCQ - Professional Staff Termination of Employment

Advisory 178

PROFESSIONAL STAFF POSITIONS

An employee must be a licensed school employee to be considered a professional staff member. Licensed school employee means teachers, school administrators and instructional support providers - a person who is employed to support the instructional program of a public school, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf and diagnostician. This definition does not apply to a person performing the functions of a practice teacher or teaching intern.

The District will attempt to activate a sufficient number of positions to accomplish the District's goals and objectives.

Before establishment of any new position, the Superintendent will present a job description for the position that specifies the qualifications and the performance responsibilities.

The Superintendent will maintain a comprehensive and up-to-date set of job descriptions of all positions in the school system.

Adopted: date of manual adoption

LEGAL REF.: 22-1-2 NMSA
22-5-14 NMSA
22-10A-2 NMSA
22-10A-3 NMSA
6.20.2.12 NMAC
6.60.9.8 NMAC

CROSS REF.: CCB - Line and Staff Relations
GCQF - Discipline, Suspension, and Termination and Discharge of Professional Staff Members

Advisory 179

**DISCIPLINE, SUSPENSION, TERMINATION
AND DISCHARGE OF
PROFESSIONAL STAFF MEMBERS**

Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, a public employer may:

- direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees;
- determine qualifications for employment and the nature and content of personnel examinations;
- take actions as may be necessary to carry out the mission of the public employer in emergencies; and
- retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

For purposes of this policy:

- "Discharge" means the act of severing the employment relationship with a ~~certificated~~ licensed school employee prior to the expiration of the current employment contract.
- "Terminate" means, in the case of a ~~certificated~~ licensed school employee, the act of not reemploying an employee for the ensuing school year.
- "Working day" means every school calendar day, excluding Saturday, Sunday or legal holiday.
- "Just cause" means a reason that is rationally related to an employee's competence or turpitude or the proper performance of assigned duties and that is not in violation of the employee's civil or constitutional rights.
- "Administrative leave" means the assignment of an employee to the employee's home to await further instructions pending the outcome of an investigation or inquiry into the actions of the employee in order to avoid interference in the inquiry. The use of "administrative leave" is not a disciplinary action.

Categories of Misconduct

Licensed staff members may be disciplined for infractions that include, but are not limited to, the following categories:

- Engaging in unprofessional conduct.
- Committing fraud in securing appointment.
- Exhibiting incompetency in their work.
- Exhibiting inefficiency in their work.
- Exhibiting improper attitudes.
- Neglecting their duties.
- Engaging in acts of insubordination.
- Engaging in acts of child abuse or child molestation.
- Engaging in acts of dishonesty.
- Being under the influence of alcohol while on duty.
- Engaging in the use, possession, or distribution of narcotics or habit-forming drugs.
- Being absent without leave.
- Engaging in discourteous treatment of the public.
- Engaging in improper political activity.
- Engaging in willful disobedience.
- Being involved in misuse or unauthorized use of school property.
- Being involved in excessive absenteeism.
- Possessing alcohol on school-owned property.
- Carrying or possessing a weapon on school grounds unless they have obtained specific authorization from the appropriate school administrator.
- Engaging in ethical misconduct by inappropriate touching, sexual harassment, discrimination or intended behavior to induce a child into engaging in illegal, immoral or other prohibited behavior.

General Provisions for Discipline

General provisions for discipline are as follows:

- *Informal consultation.* Nothing contained herein will limit a supervising administrator's prerogative to engage in informal consultation with a licensed employee to discuss matters of concern related to the employee's performance, conduct, et cetera.
- *Persons authorized to impose discipline.* Any supervising licensed administrator who is the immediate or primary supervisor of a staff member is authorized to impose a penalty or penalties, short of termination.
- *Administrative discretion.* In adopting these policies/procedures, it is the intention of the District that they be interpreted and applied in a reasonable fashion. The policies are not intended to restrict or eliminate the discretion traditionally afforded to supervising administrators to determine whether discipline is appropriate. Administrators are therefore directed to continue to use reasonable discretion in determining whether a particular alleged violation merits discipline.
- *Right not to impose discipline.* The District reserves the right not to discipline a staff member for conduct that violates this policy.
- *Additional reasons for discipline.* A staff member may be disciplined for conduct that has occurred but that, at or near the time of misconduct, was not the subject of or identified as a reason for a specific proceeding under this policy.
- *Amendments.* The District reserves the right to amend this policy in any way at any time. Any amendment shall have prospective application only.
- *Severability.* If any provision of this policy is held to be invalid for any reason, such action shall not invalidate the remainder of this policy. If any provision of this policy conflicts with any provisions in any other policies adopted by the District, the provisions of this policy shall prevail.

Minor Discipline

Minor disciplinary action includes, without limitation thereto, removal from grounds, written warning, written reprimand, or suspension. Minor disciplinary action shall be imposed by the staff member's administrative supervisor upon informing the employee of any violations of state or federal statutes, policies, rules or the New Mexico code of ethics and offering a minimum due process hearing and opportunity to express the employee's side of the issue before implementing the disciplinary action. The disciplinary action shall be confirmed in writing to the employee. The discipline may only be appealed to the next level of administration. The hearing procedure shall be as follows.

Step 1 - Notice:

- Upon the supervising administrator's determination of the existence of cause to impose discipline, the supervising administrator shall notify the staff member of intent to impose discipline. The notice shall be in writing and shall be delivered in person or by first-class mail. The notice shall include the following:
 - The conduct or omission on the part of the staff member that constitutes the reason for discipline.
 - A scheduled meeting time between the supervising administrator and the staff member. Such meeting shall be scheduled not more than ten (10) working days after the date the licensed staff member receives the notice.
 - A statement of the disciplinary action the supervising administrator intends to impose.
 - Copies of any available relevant documentation, at the discretion of the supervising administrator.

Step 2 - Hearing:

- At the hearing, the supervising administrator shall discuss with the staff member the conduct that warrants disciplinary action and shall provide the staff member with any appropriate evidence and a copy of relevant documentation if not previously provided.
- The supervising administrator shall conduct the hearing in an informal manner, without adherence to the rules of evidence and procedure required in judicial proceedings.
- A record of the hearing shall be made by electronic recordation.

Step 3 - Decision (in writing):

- At the hearing, or within seven (7) working days following the hearing, the supervising administrator shall, in writing, inform the licensed staff member of the decision. If the decision is to impose discipline, written notice of the discipline shall be enclosed.

Appeal of Minor Discipline

A staff member who wishes to object to a minor disciplinary action shall submit a written complaint to the supervisor's superior within five (5) work days of receiving notice of the disciplinary action. Failure to request the hearing in the time frame indicated will be considered acceptance of the discipline imposed. The appeal shall specifically describe the part of the determination with which the staff member disagrees, such as:

- Determination was founded upon error of construction or application of any pertinent regulations or policies.
- Determination was unsupported by any evidence as disclosed by the entire record.
- Determination was materially affected by unlawful procedure.
- Determination was based on violation of any statutory or constitutional right.
- Determination was arbitrary and capricious.
- The penalty was excessive.

The appeal shall be based on the record of the hearing. The supervising administrator, the Superintendent, or, when appropriate, the ~~Board~~ governing authority may, at the conclusion of the appeal, uphold the discipline, modify the decision, or refer the matter back to the level from which it was appealed for rehearing and additional information. Such decision, along with specific direction as to the effective date of any discipline, shall be communicated to the staff member within a reasonable amount of time following the appeal, not to exceed seven (7) working days. The decision upon appeal is final for all minor disciplinary actions.

Termination Pursuant to 22-10A-24 NMSA (1978)

The following procedures will be used to impose any termination permitted under 22-10A-24 NMSA (1978) except that it does not apply to:

- A ~~certificated instructor~~ licensed school employee employed to fill the position of a ~~certificated licensed school instructor~~ employee entering military service;
- A ~~person~~ licensed school administrator who is employed as a ~~certificated licensed school administrator~~; ~~or~~
- An ~~non-certificated unlicensed~~ school employee employed to perform primarily District-wide management functions; ~~or~~
- A person who does not hold a valid license or has not submitted a complete application for licensure within the first three months from beginning employment duties.

Step 1 - Notice:

- Upon the Superintendent's determination of the existence of cause to terminate, and ~~not later than fourteen (14) days~~ on or before fifteen (15) working days prior to the last day of the school year, the Superintendent shall notify the staff member of intent to terminate. The notice shall be in writing and shall be delivered in person or by

first-class mail to the last address provided for personnel records. The notice shall include the following:

- The statement that the employee has the right to request written reasons for the decision to terminate and such reasons shall be provided within ~~ten (10)~~ five (5) working days of such request.
- The reasons shall not be publicly disclosed by the administration or ~~Board~~ governing authority. ~~For a~~ licensed employee who has not been offered and accepted a third-year contract for services and licensed educational assistants with less than one year of employment ~~of less than three (3) consecutive years of service~~ the decision to terminate is not contestable under the School Personnel Act.
 - For licensed employees who have been offered and accepted a third-year contract for ~~with three (3) or more years of service~~ and licensed educational assistants employed for more than one year the following appeal procedure shall apply. ~~(consult your attorney to determine what constitutes three (3) or more years of service under New Mexico law.)~~

Step 2-4 - Appeal Requirements and Content:

- Termination may be appealed to the ~~Board~~ governing authority by a professional staff employee who has been employed for more than two consecutive years ~~with three (3) or more consecutive years of service~~ and licensed educational assistants employed for more than one year by making a request to the Superintendent within five (5) working days of the date of receipt of the notice of termination requesting a meeting with the ~~Board~~ governing authority.
 - The appeal shall be granted if the employee responds to the Superintendent in writing within ten (10) working days of receiving the reasons for termination with the following information:
 - ▲ A statement of contention that the employee believes the decision is without just cause.
 - ▲ A brief statement of the reason(s) why the staff member believes the decision is without just cause.
 - ▲ A statement of the facts that the employee believes support this contention.

Step 5 - Appeal Procedure:

- The ~~Board~~ governing authority shall meet to hear the employee's statement in no less than five (5) or more than fifteen (15) working days after receipt of the statement.
- The hearing shall be conducted informally in accordance with the provisions of the Open Meeting Act.
 - Hearing Procedure:
 - ▲ The employee and the Superintendent may each be accompanied by a person of their choice.
 - ▲ The Superintendent shall present the factual basis for determination that just cause exists for the termination, limited to the reasons provided to the employee.
 - ▲ The employee shall present contentions, limited to the reason(s) why the licensed staff member believes the decision is without just cause.
 - ▲ Rebuttal to the employee's presentation may be presented as deemed relevant by the ~~Board~~ governing authority.
 - ▲ Witnesses called may be questioned by the ~~Board~~ governing authority, the Superintendent or an appointed representative, and the employee or an appointed representative.
 - ▲ The ~~Board~~ governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable.
 - ▲ No record shall be made of the hearing.
 - The ~~Board~~ governing authority shall take such action as is necessary in accordance with the Open Meeting Act to uphold or deny the recommendation to terminate. The ~~Board~~ governing authority shall notify the employee and the Superintendent of its decision in writing within five (5) working days from the conclusion of the meeting.

Termination - Arbitration Appeal Pursuant to 22-10A-25 NMSA (1978)

An employee still aggrieved by a decision of the ~~Board~~ governing authority may appeal the decision to an arbitrator by doing the following:

- Submitting a written appeal to the Superintendent within five (5) working days from receipt of the ~~Board~~ governing authority's written decision or refusal to grant a hearing on the issue of termination.
- Accompanying the written appeal shall be a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to subsection E of Section 22-10A-24 NMSA (1978).
- Including in the contentions a statement of facts supporting the contentions.

Failure of the employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify the employee for any appeal and render the ~~Board~~ governing authority's decision on termination final.

If the arbitration appeal is timely and complete, the ~~Board~~ governing authority and the employee shall meet within ten (10) working days from the receipt of the request for an appeal and select an independent arbitrator, qualified in accord with the applicable statute, to conduct the appeal. If the parties fail to agree on an arbitrator, they shall request the presiding judge in the judicial district in which the employee's public school is located to select an independent arbitrator within five (5) working days of the date of the request.

A de novo (new) hearing shall be conducted within thirty (30) working days of selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, sending such notice to the employee and ~~Board~~ governing authority.

The parties shall be provided a copy of the relevant portion of this policy which shall include:

- Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the arbitrator.
- The arbitrator may issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and has the power to administer oaths. Subpoenas issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action or in the manner provided by the American Arbitration Association's voluntary labor arbitration rules if that entity is used by the parties.
- The ~~Board~~ governing authority shall be required to prove by a preponderance of the evidence that just cause to discharge the employee existed at the time of the notice of intent to discharge the employee by the administration.
- Hearing Procedure:
 - The employee and the ~~Board~~ governing authority may each be accompanied by counsel.

- The ~~Board~~ governing authority shall present the basis for determination that just cause exists for the discharge.
 - The employee shall present reason(s) why the recommendation is without just cause.
 - Either party shall be permitted to call witnesses and to introduce documentary evidence.
 - Witnesses called may be questioned by the ~~Board~~ governing authority or a representative, and the employee or a representative.
 - Technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of the statements or records tendered, the accuracy of truth of which is in reasonable doubt.
 - A record shall be made of the hearing and each party may order the record at the expense of the party.
- The arbitrator shall notify the employee and the ~~Board~~ governing authority of the decision in writing within ten (10) working days from the conclusion of the arbitration hearing. The decision shall contain findings of fact and conclusions of law affirming or reversing the action of the ~~Board~~ governing authority.

The parties shall be guided by the statute and arbitrator as to the conduct of the hearing, each party bearing its own costs. The arbiter's fees and other expenses in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

No official record shall be made of the proceeding but the party desiring a record may arrange for a record, paying the expense.

Discharge per 22-10A-27 NMSA (1978)

A ~~certificated~~ licensed school employee may be discharged only for just cause following procedures as indicated below:

Notice:

- Upon the Superintendent's determination of the existence of cause to discharge, the Superintendent shall notify the licensed staff member of intent to recommend discharge. The notice shall state the cause for the recommendation and shall advise the employee of a right to a discharge hearing before the ~~Board~~ governing authority.

- The notice shall be in writing and shall be provided in accordance with the law for service of process in civil actions.
- If the licensed school employee does not exercise that right to hearing, the superintendent shall discharge the licensed school employee.

Employee's Request for Hearing:

- An employee who receives notice of intent to recommend discharge may exercise the right to a hearing before the ~~Board~~ governing authority by giving the Superintendent written notice of that election within ~~five (5)~~ ten (10) working days of receipt of the notice of ~~intent to recommendation~~ discharge.
- The ~~Board~~ governing authority shall hold a discharge hearing no less than twenty (20) and no more than forty (40) working days after the receipt of the staff member's election of a hearing.

Preliminary Information

- At least ten (10) days written notice of the date, time and place of the discharge hearing shall be provided to the employee with such notice in the same form as used in civil proceedings. The notice shall indicate the following:
 - Both the Superintendent and the ~~certificated~~ licensed school employee may be accompanied by a person of their choice.
 - Each party is to complete and respond to discovery by deposition and production of documents prior to the hearing date established.
 - The ~~Board~~ governing authority may issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and has the power to administer oaths.
 - The ~~administration~~ Superintendent shall be required to prove by preponderance of the evidence that just cause to discharge the ~~certificated~~ licensed school employee existed at the time of the notice of intent to discharge.
 - Procedure for the conduct of the hearing shall be as follows:
 - ▲ The Superintendent shall present the factual basis for determination that just cause exists for the termination based upon information available at the time the employee was given notice of the intent to discharge.

- ▲ The employee shall present reason(s) why the recommendation is without just cause.
 - ▲ Either party shall be permitted to call witnesses and to introduce documentary evidence.
 - ▲ Witnesses called may be questioned by the Superintendent or an appointed representative, and the employee or an appointed representative.
 - ▲ The ~~Board~~ governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable.
 - ▲ A record shall be made of the hearing and each party may have one (1) copy of the record at the expense of the ~~Board~~ governing authority.
- The ~~Board~~ governing authority shall notify the employee and the Superintendent of its decision in writing within twenty (20) days from the conclusion of the hearing. The ~~Board~~ governing authority shall take such action as is necessary in accordance with the Open Meeting Act.

**Discharge -Arbitration Appeal Pursuant
to 22-10A-287 NMSA (1978)**

An employee aggrieved by a decision of the ~~Board~~ governing authority to discharge may appeal the decision to an arbitrator by doing the following: Submitting a written appeal to the ~~Superintendent~~ governing authority within ~~five (5)~~ ten (10) calendar working days from receipt of the ~~notice of discharge~~ written decision by the Board to the employee of the governing authority.

The ~~Board~~ governing authority may delegate responsibility for the arbitration to the superintendent.

If the arbitration appeal is timely the ~~Board~~ governing authority (or superintendent as delegee) and the employee shall meet within ten (10) working days from the receipt of the request for an appeal and select an independent arbitrator, qualified in accord with the applicable statute, to conduct the appeal. If the parties fail to agree on an arbitrator, they shall request the presiding judge in the judicial district in which the ~~employee's~~ public school is located to select an independent arbitrator within five (5) working days ~~of~~ from the date of the request.

The hearing shall be conducted within thirty (30) working days of selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, sending such notice to the employee and ~~Board~~ governing authority.

The parties shall be provided a copy of the relevant portion of this policy which shall include:

- Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the arbitrator.
- The arbitrator may issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and has the power to administer oaths. Subpoenas issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action or in the manner provided by the American Arbitration Association's voluntary labor arbitration rules if that entity is used by the parties.
- The ~~Board~~ governing authority shall be required to prove by preponderance of the evidence that just cause to discharge the certificated employee existed at the time of the notice of intent to discharge the employee by the administration.
- Hearing Procedure:
 - The employee and the ~~Board~~ governing authority may each be accompanied by counsel.
 - The ~~Board~~ governing authority shall present the basis for determination that just cause exists for the discharge.
 - The employee shall present reason(s) why the recommendation is without just cause.
 - Either party shall be permitted to call witnesses and to introduce documentary evidence.
 - Witnesses called may be questioned by the ~~Board~~ governing authority or a representative, and the employee or a representative.
 - Technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of the statements or records tendered, the accuracy of truth of which is in reasonable doubt.
 - A record shall be made of the hearing and each party may order the record at the expense of the party.
- The arbitrator shall notify the employee and the ~~Board~~ governing authority of the decision in writing within thirty (30) working days from the conclusion of the arbitration hearing. The decision shall contain findings of fact and conclusions of law affirming or reversing the action of the ~~Board~~ governing authority.

Each party shall bear its own costs and expenses.

Additional Provisions and Conditions

During the pendency of any hearing, neither the licensed staff member nor the supervising administrator shall contact the Superintendent or a ~~Board~~ governing authority member to discuss the merits of the supervising administrator's recommendation except as provided by this policy.

This policy addresses only discipline, termination or discharge and has no application to any of the following:

- Letters or memorandums directed to a licensed staff member containing directives or instructions for future conduct.
- Counseling of a licensed staff member concerning expectations of future conduct.
- Placing an employee on administrative leave with pay and assignment of the employee to home during work hours in order to conclude a review of the employee's actions or activities pending an administrative recommendation.

The ~~Board~~ governing authority shall file annually a record with the Secretary of Education of all terminations and discharges and all actions arising from terminations and discharges.

Adopted: date of manual adoption

LEGAL REF.: 10-7E-1 to 10-7E-26 NMSA (1978) Public Employee Bargaining Act
10-15-1 NMSA (1978) Open Meeting Act
22-10A-5 NMSA (1978)
22-10A-24 NMSA (1978)
22-10A-25 NMSA (1978)
22-10A-26 NMSA (1978)
22-10A-27 NMSA (1978) Discharge hearing; procedures
22-10A-28 NMSA (1978) Appeals; independent arbitrator; qualifications; procedure; binding decision
22-10A-29 NMSA (1978) Compensation payments to discharged personnel
22-10A-30 NMSA (1978) Supervision and correction procedures
22-10A-31 NMSA (1978) Denial, suspension and revocation of licenses
22-10A-32 NMSA (1978) Licensed school employees; required training program

6.60.9.9 NMAC Standards of Professional Conduct
6.60.9.12 NMAC Reporting Requirements
6.67.2.8 NMAC Notice of reemployment or termination of
licensed personnel

CROSS REF.: DKA - Payroll Procedures/Schedules
GBEB - Staff Conduct
GCA - Professional Staff Positions

Advisory 180

**SUPPORT STAFF CONTRACTS
AND COMPENSATION**

Support staff members are all employees of the District who are not required by state law or by a District policy, regulation, or job description to possess ~~teaching~~ a license or certificates from the New Mexico Public Education Department for the purpose of performing their jobs, unless they are expressly designated as professional staff members in notices of employment or contracts executed by the Board.

Compensation

The Superintendent will provide to the Board recommendations on the salaries and benefits of support staff employees in conjunction with the development of the District's annual budget. The Board will determine salaries and benefits of support staff employees annually, differentiated on the basis of duties and responsibilities.

Adopted: date of manual adoption

LEGAL REF.: 22-10A-39 NMSA (1978).

CROSS REF.: GDQB - Resignation of Support Staff Members

Advisory 181

**DISCIPLINE, SUSPENSION, AND TERMINATION
OF SUPPORT STAFF MEMBERS**

Unless limited by the provisions of a collective bargaining agreement or by other statutory provision, a public employer may:

- direct the work of, hire, promote, assign, transfer, demote, suspend, discharge or terminate public employees;
- determine qualifications for employment and the nature and content of personnel examinations;
- take actions as may be necessary to carry out the mission of the public employer in emergencies; and
- retain all rights not specifically limited by a collective bargaining agreement or by the Public Employee Bargaining Act.

For purposes of this policy:

- "Terminate" means, in the case of a noncertificated school employee, the act of severing the employment relationship with the employee.
- "Working day" means every calendar day, excluding Saturday, Sunday or legal holiday.
- "Administrative leave" means the assignment of an employee to the employee's home to await further instructions pending the outcome of an investigation or inquiry into the actions of the employee in order to avoid interference in the inquiry. The use of "administrative leave" is not a disciplinary action.

Categories of Misconduct

Staff members may be disciplined for infractions that include, but are not limited to, the following categories:

- | | |
|---|--|
| • Absence without leave | • Insubordination |
| • Abuse of leave | • Neglect of duty |
| • Alcohol or drug impairment | • Unauthorized possession of a
weapon on school grounds |
| • Child abuse or molestation | • Unauthorized use of school
property |
| • Discourteous treatment of the
public | • Unlawful conduct |
| • Dishonesty | |

- Excessive absenteeism
- Fraud in securing employment
- Improper attitude
- Incompetence or inefficiency
- Use of illegal drugs
- Violation of a directive of a supervisor
- Violation of a District policy or regulation

General Provisions for Discipline are as follows:

- *Informal consultation.* Nothing contained herein will limit a supervising administrator's prerogative to engage in informal consultation with an employee to discuss matters of concern related to the employee's performance, conduct, etc.
- *Persons authorized to impose discipline.* Any supervising licensed administrator who is the immediate or primary supervisor of a staff member is authorized to impose a penalty or penalties, short of termination.
- *Administrative discretion.* In adopting these policies/procedures, it is the intention of the District that they be interpreted and applied in a reasonable fashion. The policies are not intended to restrict or eliminate the discretion traditionally afforded to supervising administrators to determine whether discipline is appropriate. Administrators are therefore directed to continue to use reasonable discretion in determining whether a particular alleged violation merits discipline.
- *Right not to impose discipline.* The District reserves the right not to discipline a staff member for conduct that violates this policy.
- *Additional reasons for discipline.* A staff member may be disciplined for conduct that has occurred but that, at or near the time of misconduct, was not the subject of or identified as a reason for a specific proceeding under this policy.
- *Amendments.* The District reserves the right to amend this policy in any way at any time. Any amendment shall have prospective application only.
- *Severability.* If any provision of this policy is held to be invalid for any reason, such action shall not invalidate the remainder of this policy. If any provision of this policy conflicts with any provisions in any other policies adopted by the District, the provisions of this policy shall prevail.

Minor Discipline

Minor disciplinary action includes, without limitation thereto, removal from the grounds, written warning, written reprimand, or suspension. Minor disciplinary action shall be imposed by the staff member's administrative supervisor upon informing the employee of any violations of state or federal statutes, policies, rules or the New Mexico code of ethics and offering a hearing and opportunity to express the employee's side of the issue before implementing the disciplinary action. The disciplinary action shall be confirmed in writing to the employee. The discipline may only be appealed to the next level of administration. The hearing procedure shall be as follows.

Step 1 - Notice and Hearing:

- Upon the supervising administrator's determination of the existence of cause to impose discipline, the supervising administrator shall notify the staff member of intent to impose discipline, the conduct or omission on the part of the staff member that constitutes the reason for discipline, and provide the employee an opportunity to explain the employee's side of the issue. A reasonable effort to determine the circumstances of the incident will be made. The discipline may be imposed immediately or following any further investigation.

Step 2- Decision (in writing):

- At the hearing, or within seven (7) working days following the hearing, the supervising administrator shall inform the employee in writing of the disciplinary action, if imposed and summarize the discussion at the hearing.

Appeal of Minor Discipline

A staff member who wishes to object to a minor disciplinary action shall submit a written appeal request to the supervisor's superior within five (5) work days of receiving notice of the disciplinary action. Failure to request the appeal in the time frame indicated will be considered acceptance of the discipline imposed. The discipline shall be suspended if the appeal is timely made. The appeal shall specifically describe the part of the determination with which the staff member disagrees, such as:

- Determination was founded upon error of construction or application of any pertinent regulations or policies.
- Determination was unsupported by any evidence as disclosed by the entire record.
- Determination was materially affected by unlawful procedure.
- Determination was based on violation of any statutory or constitutional right.
- Determination was arbitrary and capricious.
- The penalty was excessive.

The appeal shall be based on the staff member's submission as listed above and the summary of the hearing made by the supervisor. The supervising administrator, the Superintendent, or, when appropriate, the Board may, at the conclusion of the appeal, uphold the discipline, modify the decision, or refer the matter back to the level from which it was appealed for rehearing and additional information. Such decision, along with specific direction as to the effective date of any discipline, shall be communicated to the staff member within a reasonable

amount of time following the appeal, not to exceed seven (7) working days. The decision upon appeal is final for all minor disciplinary actions.

Termination Pursuant to 22-10A-24 NMSA (1978)

The following procedures will be used to impose any termination permitted under 22-10A-24 NMSA (1978) except that it does not apply to:

- A noncertificated school employee employed to perform primarily District-wide management. (22-10A-26 NMSA)

Step 1 - Notice:

- Upon the Superintendent's determination of the existence of cause to terminate, the Superintendent shall notify the staff member of intent to terminate. The notice shall be in writing and shall be delivered in person or by first-class mail. The notice shall include the following:
 - The statement that the employee has the right to request written reasons for the decision to terminate and such reasons shall be provided within ~~ten (10)~~ five (5) working days of such request.
 - The reasons shall not be publicly disclosed by the administration or Board. ~~For an A local Board may terminate a nonlicensed school employee of with less than one (1) three (3) consecutive years of service-employment the decision to terminate is not contestable under the School Personnel Act upon for any reason it deemeds sufficient by the Board.~~
 - For a nonlicensed school employee who has been employed for more than one year ~~employees with three (3) or more years of service~~ the following appeal procedure shall apply. ~~(consult your attorney to determine what constitutes three (3) or more years of service under New Mexico law.)~~

Step 2-3 Appeal Requirements and Content:

- Termination may be appealed to the Board by ~~an employee with three (3) consecutive years of service~~ a nonlicensed school employee who has been employed for more than one year by making a request to the Superintendent within five (5) working days of the date of receipt of the notice of termination requesting reasons for the termination decision and a meeting with the Board.
 - The appeal shall be granted if the employee responds to the Superintendent in writing within ten (10) working days of receiving the reasons for termination with the following information:

- ▲ A statement of contention that the employee believes the decision is without just cause.
- ▲ A brief statement of the reason(s) why the staff member believes the decision is without just cause.
- ▲ A statement of the facts that the employee believes support this contention.

Step 4 - Appeal Procedure:

- The ~~Board~~ governing authority shall meet to hear the employee's statement in no less than five (5) or more than fifteen (15) working days after receipt of the statement.
- The hearing shall be conducted informally in accordance with the provisions of the Open Meeting Act.
 - Hearing Procedure:
 - ▲ The employee and the Superintendent may each be accompanied by a person of their choice.
 - ▲ The Superintendent shall present the factual basis for determination that just cause exists for the termination, limited to the reasons provided to the employee.
 - ▲ The employee shall present contentions, limited to the reason(s) why the staff member believes the decision is without just cause.
 - ▲ Rebuttal to the employee's presentation may be presented as deemed relevant by the Board.
 - ▲ Witnesses called may be questioned by the ~~Board~~ governing authority, the Superintendent or an appointed representative, and the employee or an appointed representative.
 - ▲ The ~~Board~~ governing authority may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable.
 - ▲ No record shall be made of the hearing.
 - The governing authority shall take such action as is necessary in accordance with the Open Meeting Act to uphold or deny the recommendation to terminate. The

~~Board governing authority~~ shall notify the employee and the Superintendent of its decision in writing within five (5) working days from the conclusion of the meeting.

~~The Board shall take such action as is necessary in accordance with the Open Meeting Act to uphold or deny the recommendation to terminate. Such decision, shall be communicated to the staff member within a reasonable amount of time following the appeal, not to exceed five (5) working days.~~

Termination - Arbitration Appeal Pursuant to 22-10A-25 NMSA (1978)

An employee still aggrieved by a decision of the ~~Board governing authority~~ may appeal the decision to an arbitrator by doing the following:

- Submitting a written appeal to the Superintendent within five (5) working days from receipt of the ~~Board governing authority's~~ written decision or refusal to grant a hearing on the issue of termination.
- Accompanying the written appeal shall be a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to subsection E of Section 22-10A-24 NMSA (1978).
- Including in the contentions a statement of facts supporting the contentions.

Failure of the employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify the employee for any appeal and render the ~~Board governing authority's~~ decision on termination final.

If the arbitration appeal request is timely and complete, the ~~Board governing authority~~ and the employee shall meet within ten (10) working days from the receipt of the request for an appeal and select an independent arbitrator, qualified in accord with the applicable statute, to conduct the appeal. If the parties fail to agree on an arbitrator, they shall request the presiding judge in the judicial district in which the employee's public school is located to select an independent arbitrator within five (5) working days of the date of the request.

A de novo (new) hearing shall be conducted within thirty (30) working days of selection of the independent arbitrator. The arbitrator shall give written notice of the date, time and place of the hearing, sending such notice to the employee and ~~Board governing authority~~.

The parties shall be provided a copy of the relevant portion of this policy which shall include:

- Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the arbitrator.

- The arbitrator may issue subpoenas for the attendance of witnesses and to produce books, records, documents and other evidence at the request of either party and has the power to administer oaths. Subpoenas issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action or in the manner provided by the American Arbitration Association's voluntary labor arbitration rules if that entity is used by the parties.
- The ~~Board~~ governing authority shall be required to prove by a preponderance of the evidence that just cause to discharge the employee existed at the time of the notice of intent to discharge the employee by the administration.
- Hearing Procedure:
 - The employee and the Board may each be accompanied by counsel.
 - The ~~Board~~ governing authority shall present the basis for determination that just cause exists for the discharge.
 - The employee shall present reason(s) why the recommendation is without just cause.
 - Either party shall be permitted to call witnesses and to introduce documentary evidence.
 - Witnesses called may be questioned by, the ~~Board~~ governing authority or a representative, and the employee or a representative.
 - Technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of the statements or records tendered, the accuracy of truth of which is in reasonable doubt.
 - A record shall be made of the hearing and each party may order the record at the expense of the party.
- The arbitrator shall notify the employee and the ~~Board~~ governing authority of the decision in writing within ten (10) working days from the conclusion of the arbitration hearing. The decision shall contain findings of fact and conclusions of law affirming or reversing the action of the ~~Board~~ governing authority.

The parties shall be guided by the statute and arbitrator as to the conduct of the hearing, each bearing their own costs. The arbiter's fees and other expenses in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

Adopted: date of manual adoption

LEGAL REF.: 22-10A-24 NMSA (1978)
22-10A-25 NMSA (1978)
22-10A-26 NMSA (1978)

CROSS REF.: DKA - Payroll Procedures/Schedules

Advisory 182

SCHOOL VOLUNTEERS

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

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

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

This policy shall not apply to:

- adults who visit a school but have no ongoing individualized interaction with a student or students, including, but not limited to, adults who have been invited to speak to a class or assembly, to judge academic competitions, to give a musical performance, or to participate in a sponsored program;
- a parent or legal guardian who is accompanying his or her child's class on a one (1)-day field trip or on another type of occasional extra-curricular activity that does not involve an overnight stay.

Adopted: date of manual adoption

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

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

GDF - Support Staff Hiring

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

GDFA - Support Staff Qualifications and Requirements
(fingerprinting requirements)

Advisory 183

GRADUATION REQUIREMENTS

Regular Education

Ninth grade class of 2009-2010 and after. A minimum of twenty four (24) units of credit aligned to the state academic content and performance standards as listed below are required for graduation for those beginning with the ninth (9th) grade class of 2009-2010. A student may receive a high school diploma of excellence after having demonstrated accomplishment of the standards or a portfolio of standards based indicators in mathematics, reading and language arts, writing, social studies, and science adopted by the Secretary of Public Education. A student may also receive the Seal of Bilingual-Biliteracy on the diploma of excellence and have it noted on the school transcript by studying and attaining proficiency in a language other than English. If a student exits from the school system at the end of grade twelve (12) without having satisfied the above requirements, the student shall receive an appropriate state certificate indicating the number of credits earned and the grade completed. If within five (5) years after a student exits from the school system, the student satisfies the requirements listed, the student may receive a high school diploma of excellence. Graduation requirements shall not be changed for a student entering the ninth grade from the requirements specified in law at the time the student enrolled in the ninth (9th) grade.

Graduation requirements may be met as follows:

- By successful completion of subject area course requirements.
- By mastery of the standards or a portfolio of standards based indicators adopted by the Secretary of Public Education in accordance with 6.19.7 NMAC and other competency requirements for the subject as determined by the Board.
- By earning credits through correspondence courses that meet graduation requirements and/or by passing appropriate courses at the college or university level if the courses are determined to meet standards and criteria established by the Board.

Graduation requirements are:

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

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

*For students entering the ninth (9th) grade in the 2017-2018 school year and after, a course in computer science may satisfy either a unit of mathematics or science, but not both, if taken after competency is determined in the subject for which the unit is applied.

**For students entering the eighth (8th) grade in the 2012-2013 school year and after, a course in health education is required prior to graduation.

***A department-approved work-based training or career and technical education course that meets state academic content and performance standards in English, mathematics, or science shall qualify as one of the requirements needed for graduation in each of these areas.

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

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

Parents are to be notified in writing not later than the conclusion of the third (3rd) nine (9)-weeks grading period of their students senior year if the student is at risk of not meeting all

graduation requirements. Progress reports are to be provided to parents and students at each grading period.

A high school student required to transfer to an out-of-state school by the transfer of the student's parents, who are members of the New Mexico National Guard or the armed forces of the United States, may request that a diploma be issued by the New Mexico high school of transfer. The student must meet the guidelines and comply with the requirements of the New Mexico Statutes Annotated regarding military dependent transfers and their courses and grades must meet or exceed New Mexico's requirements for graduation as determined by the School District.

Special Education

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

Adopted: date of manual adoption

LEGAL REF.: 22-13-1.1 NMSA (1978)
22-13-1.4 NMSA (1978)
6.19.7 NMAC
6.29.1.9 NMAC

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

RELEVANT STATUES, RULES AND CITATIONS

The Bills that are referenced in the advisories above make up an additional 50 pages in PDF format. Policy Services has chosen to provide a reference to the New Mexico Legislature site where these bills can be found rather than include them in the text which the district will download. Please use the reference below in an internet browser to get to the site and then select the 2019 legislative session to be able to review any and all of the Bills sited in the advisories.

https://nmlegis.gov/Legislation/BillFinder/Governor_Actions

