

POLICY SERVICES

ADVISORY

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Policy Advisories

Policy Advisory No. 273 – GBGC – Employee Assistance. NMSBA model policy G-1350 GBGC, Employee Assistance, is modified to replace the existing opening paragraph which addresses situations in which the District may require an employee to complete a medical examination. The language in the current policy is too broad in that it requires a medical examination when warranted “in the opinion of the immediate supervisor and/or the Superintendent.” The Americans with Disabilities Act (42 U.S.C. § 12112(d)), its implementing regulations (29 C.F.R. § 1630.14), and guidance issued by the Equal Employment Opportunity Commission (EEOC) require more stringent criteria before an employee may be required by an employer to undergo a medical examination. Those criteria are now addressed in the amended policy, which also expands the type of medical provider who may conduct the examination from “licensed physician” to “a licensed health care provider.”

Any situation in which a district requires a medical examination is fraught with legal risk and districts are urged to seek legal advice in such situations.

Policy Advisory No. 274 – KDB (K-1000) Publics right to Know. K-1000 KDB Public’s Right to Know/Freedom of Information and the accompanying request form exhibit (K-1031 KDB-E) are amended to more closely align with the language in New Mexico’s Inspection of Public Records Act (“IPRA”) and to change some potentially misleading language. Most of the changes should speak for themselves.

It should be noted, however, that **the notice required by IPRA to be posted by the records custodian to notify the public of its rights to request records must be posted on the district’s website**, in addition to at its administrative offices. Among the things required in the notice is the cost to the requestor for making copies. IPRA allows a public body to charge a reasonable fee, not to exceed \$1.00/page for most copies. According to the N.M Department of Justice (previously known as the Office of the Attorney General), a reasonable fee is only intended to cover the

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actual cost incurred by the public body to make copies (not including the cost of staff time) and a reasonable fee should not routinely be the maximum allowable fee. This policy modification puts the responsibility on the records custodian to determine a reasonable charge/page for copying and to include that in the public notice.

The IPRA compliance guide by the Dept. of Justice is an indispensable resource for records custodians in their effort to comply with IPRA and it is located here: <https://nm DOJ.gov/wp-content/uploads/NMDOJ-IPRA-Guide-Ninth-Edition-25.03.21.pdf>. That guide includes a template Notice of Right to Inspect Public Records, on page 76, that the records custodian may use to craft the District's notice.

Districts are also advised to see legal advice for any questions related to the Inspection of Public Records Act.

If you have any questions or requests call Policy Services at (505) 469-0193 or email Dan Castille, Policy Services Director at rdepolicyservices@outlook.com.

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EMPLOYEE ASSISTANCE

~~When, in the opinion of the immediate supervisor and/or the Superintendent, the employee's physical or emotional condition warrants, the District may require a complete examination, at District expense, by a licensed physician selected by the District. When the District has a reasonable belief, based on objective evidence, that an employee may be unable to perform essential job functions or may pose a direct threat to the health or safety of the employee or others, the District may require the employee to undergo a medical examination, at District expense, by a licensed health care provider qualified to evaluate the condition at issue. Any such examination shall be job-related and consistent with business necessity and appropriately tailored to assess the employee's fitness for duty, including, where relevant, mental or behavioral health and any risk of harm to the employee or others. All medical information obtained pursuant to this policy shall be maintained as confidential, kept in files separate from personnel records, and disclosed only as permitted by law, and shall be used solely to evaluate the employee's ability to perform essential job functions and/or to assess workplace safety.~~

The Superintendent shall have procedures for complying with the requirements of the Occupational Safety and Health Administration (OSHA), including an exposure-control plan, methods of compliance, work-practice controls, postexposure evaluation and follow-up, and administering vaccines to employees exposed to Hepatitis B virus.

All employees who as a result of their employment have had significant exposure to bloodborne pathogens (Hepatitis B/Human Immunodeficiency Virus) are required to report the details of the exposure in writing to the District and are required to follow postexposure evaluation and follow-up activities in accordance with New Mexico and federal laws. An employee who chooses not to complete these reporting requirements will be at risk of losing any claim to rights.

Employee Assistance Program

Employees may be referred to an Employee Assistance Program when the employee's job performance or attendance is unsatisfactory, and the employee is unable or unwilling to correct the situation, regardless of paid leave time available to the employee. The employee has the responsibility to perform job duties and to have regular dependable attendance. Employees who have drug or alcohol abuse problems are encouraged to voluntarily seek assistance.

The Employee Assistance Program will consist of referrals to Board approved community or other area counseling and rehabilitation programs through the personnel office.

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Failure to exhibit continuous and ongoing improvement of the unsatisfactory work performance after assistance has been offered and/or accepted will result in termination or non-renewal of the employee, according to prescribed School District policy, administrative regulations, local, state and federal laws.

Any employee who voluntarily seeks support and assistance from the District for a drug or alcohol problem before it becomes an employment issue will be granted unpaid leave, sick leave, or a combination of both to secure treatment/counseling for their problem.

The District employer reserves the right to request a second medical opinion, if the employer questions the employee returning to work in a timely manner.

Adopted: date of manual adoption

LEGAL REF.:

29 U.S.C. 653

42 U.S.C. § 12112(d)

29 C.F.R. § 1630.14

CROSS REF.:

EBBB - Accident Reports

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ADVISORY 274

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PUBLICS RIGHT TO KNOW / FREEDOM OF INFORMATION

The Board recognizes the right of the public to information concerning its actions, its policies, and the details of its educational and business operations. The Superintendent is appointed the custodian of public records and may ~~delegate~~ designate this duty as necessary. The custodian of records shall follow the directives of 14-2-7 NMSA (1978) in providing access to public records including the posting in a conspicuous place at the administrative office of the District , and on the District's website, the proper notice of a person's rights and the procedures.

~~The office of the Superintendent will be open to~~ custodian of records will receive requests for records inspection or copying during normal school business hours ~~from Monday through Friday~~.

Requests for access to records shall be made in writing (which may include electronic communication such as e-mail or facsimile) directed to the ~~office of the Superintendent~~ designated records custodian. ~~Any written communication should contain~~ The request shall provide the name, address and telephone number of the requestor and ~~should state the record required~~ identify the records sought with reasonable particularity. In the event that a written request is not made to the records custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the records custodian of the requested public records, if known, and notify the requester.

~~The Superintendent may permit access to, or provide for the copying of, the records requested within a reasonable period of time following receipt of the written request (fifteen [15] days) or will provide an explanation of a cause for delay if the records are not available and will give notification of the time the records will be available, or, may deny access if there is no record to match the request. If the inspection of the requested records is not permitted within three (3) days, the Superintendent will explain in writing when the records will be available for inspection or when the Board will respond to the request. A records custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen (15) days after receiving a written request. If the inspection is not permitted within three (3) business days, the custodian shall explain in writing when the records will be available for inspection or when the custodian will respond to the request. The three (3)-day period shall not begin until the written request is delivered to the office of the custodian. If the custodian determines that a written request is excessively burdensome or broad, an additional reasonable period of time shall be allowed to comply with the request. The records custodian shall provide written notification to the requester within fifteen (15) days of receipt of the request that additional time will be needed to respond to the written request. If a written request is denied, the records custodian shall provide the requester with a written explanation of the denial in the manner provided by law.~~

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Requirements of access and inspection apply only to existing records and do not require creation of new records. Public inspection of a document that otherwise would be a public record may be denied by the ~~Superintendent~~ custodian of records if ~~(1) the record is made confidential by statute, or (2) the record involves the privacy interests of persons based on exceptions provided by law.~~ If a public record contains material that is not subject to disclosure, the District will ~~delete, if required by law, redact or separate~~ such material and make available to the requester such material in the record as is subject to disclosure.

~~Records contained on a computer will be provided only in the form in which the information can be made available using existing computer programs~~ The records custodian shall provide a copy of a public record in electronic format if the public record is available in electronic format and an electronic copy is specifically requested. However, the records custodian is only required to provide the electronic record in the file format in which it exists at the time of the request.

~~Copies of radio or recording tapes of discs, video or films, pictures, slides, graphics, illustrations, or similar audio or visual items or devices will not be furnished unless such items or devices have been shown or played at a public meeting of the Board.~~

~~A fee shall be levied on each request to cover the cost of making copies, staff time, computer time, etc. Fees will be collected prior to releasing material.~~

~~The fees will be based upon the following:~~

- ~~• Ten cents (10¢) per page for materials indicated as Board minutes, agendas, financial records, contracts, courses of study, or statistical summaries.~~
- ~~• Thirty five cents (35¢) per copy for materials not listed above that require additional clerical and/or professional staff time to make available.~~
- ~~• Actual cost, if available, will be assessed.~~
- ~~• Free copies shall be furnished if they are to be used in claims against the United States.~~

The custodian of records:

- may charge reasonable fees for copying the public records, unless a different fee is otherwise prescribed by law. The custodian shall periodically determine the reasonable fee based on the costs incurred by the District to make copies (not including the cost of staff time) and the amount of the copying fee shall be included in the public notice required by 14-2-7 NMSA (1978). The copying fee shall not exceed one dollar (\$1.00) per printed page for documents eleven inches by seventeen inches (17" x 11") in size or smaller;

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- may charge the actual costs associated with downloading copies of public records to a computer disk or storage device, including the actual cost of the computer disk or storage device, but not including the cost of staff time;
- may charge the actual costs associated with transmitting copies of public records by mail, electronic mail or facsimile (not including the cost of staff time);
- may require advance payment of the fees before making copies of public records for a requestor;
- shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and
- shall provide a receipt, upon request.

Adopted: date of manual adoption

LEGAL REF.:

14-2-1 to 14-2-12 NMSA (1978)

~~14-3-1 to 14-3-24 NMSA (1978)~~

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EXHIBIT **EXHIBIT**

**PUBLIC'S RIGHT TO KNOW /
FREEDOM OF INFORMATION**

REQUEST FOR PUBLIC RECORDS OF THE SCHOOL DISTRICT

Name _____ Date _____

Address _____

Street City State Zip

Phone: Home _____ Work _____

E-mail address _____

Nature of request:

- Opportunity to review records (no original record may leave the custodian's office)
- Copies of records via U.S. Mail to the address above.
- Electronic copies to be emailed to the email address above or, if too voluminous, a mailed storage device to the address above.

Notice: A fee will be charged for copying based upon actual cost ~~for providing the information~~ of making copies for a requestor as allowed by law and District policy.

Records requested (please be as explicit as possible as to the records you desire):

Date

Signature

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