

POLICY SERVICES ADVISORY

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CONTENTS

Policy Advisory No. 210JK – Student Discipline

Policy Advisory No. 211JICA – Student Dress

Policy Advisory No. 212AC — Nondiscrimination / Equal Opportunity

**Policy Advisory No. 213GCQF – Discipline, Suspension, Termination/
.....and Discharge**

**Policy Advisory No. 214GDQD – Discipline, Suspension, Termination/
.....and Discharge**

Policy Advisory Discussion

Policy Advisory No. 210. JK – Student Discipline. Senate Bill 80 and House Bills 29 and 43 approved during the recent New Mexico legislative session added to the current statute 22-5-4.3 regarding school discipline policies.

The addition from **Senate Bill 80 and House Bill 29** was on the subject of prohibiting imposition of discipline, discrimination or disparate treatment against a student's race, religion or culture or because of the student's use of

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protective hairstyles or cultural or religious headdresses. After review of these bills, Policy Services has interpreted them to address the issue of hair as it may cause a disruption of the education of students. Educators are likely familiar with the past court cases and discussions surrounding the issue of hair color, length, style and sundry other concepts that were considered to distract from the education of other students. A narrow interpretation of the changes enacted by these bills would seem to focus on protective hairstyles or cultural or religious headdresses. The definitions in statute 22-5-4.3 however, would require a broader interpretation.

It appears to Policy Services that hair as to color, length, style, including wigs would now be off limits to disciplinary action for disruption of the educational process. Additionally, an individual's personal cultural or religious headdresses, and wraps can not be considered a disruption to the educational process. It is the suggestion of Policy Services that any focus of disciplinary action regarding hair or coverings of the hair relative to the individual's personal cultural or religious beliefs, can no longer be the considered for disciplinary action.

It may be noted that the change suggested in Policy JK, Student Discipline, does not include the extensive definitions of the statute. The statute is linked to the policy for reference purposes but the definitions are not included in the policy since they were so broad as to be inclusive of any and all disciplinary action related to hair unless judicial verification would provide otherwise. Efforts to make exceptions by a school district will likely be challenged at some legal cost.

House Bill 43 added a section to statute 22-5-4.3 which requires all school discipline policies define and include a specific prohibition against racialized aggression involving a student or school personnel and provide links to the statewide hotline to report racially charged incidents or racialized aggression.

Policy Services has selected the following definition of racialize for purposes of definition since none was given in statute. Racialized: to give a racial character to; to categorize, marginalize , or regard according to race. Using this definition with aggression would give us a definition as follows: racialized aggression would be defined as characterizing, categorizing or marginalizing an aggressive act as racial in nature. This definition has been used in the policy JK. Should a school district wish to use another definition it should feel free to do so.

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Policy Services

2

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As to providing links to the statewide hotline for reporting incidents of racialized aggression, a general statement of intent was included with the expectation that the school district would provide a link on its website to the statewide hotline for this purpose, upon such a hotline being available. Policy Services was unable to find a specific hotline for racial purposes.

Policy Advisory No. 211. JICA – The only changes made to the policy on Student Dress and grooming are the addition of the legal reference to NMSA 22-5-4.3 and the cross reference to JK.

Policy Advisory No. 212. AC – The only change made to the policy on Nondiscrimination is the addition of the legal reference to NMSA 22-5-4.3 because the statute adds to discriminatory offenses by way of definitions.

Policy Advisory No. 213. GCQF – Discipline, Suspension, Termination and Discharge of Professional Staff. Per the requirements of House Bill 43 the addition of the prohibition against racialized aggression and reference to the link to a statewide hotline for reporting were added to this professional staff discipline policy. Again, it should be noted that Policy Services was unable to find a specific hotline for racial purposes.

Policy Advisory No. 214. GDQD – Discipline, Suspension, Termination and Discharge of Support Staff. Per the requirements of House Bill 43 the addition of the prohibition against racialized aggression and reference to the link to a statewide hotline for reporting were added to this professional staff discipline policy.

If you have any questions, call Policy Services at 1-505-469-0193. Ask for Donn Williams, Policy Services Director. E-mail [nmsbapolicy@cox.net].

Advisory 210

NEW MEXICO SCHOOL BOARDS ASSOCIATION

Policy Services

4

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STUDENT DISCIPLINE

Parents, school personnel and students shall be involved in the development of policies, and public hearings before the Board shall be held during the formulation of these policies in the high school attendance areas within each district or on a district-wide basis for those districts that have no high school. The Superintendent shall prepare and recommend the final format of discipline policies and develop procedures for the discipline of students that comply with state laws and regulations. These policies and procedures will apply to all students traveling to, attending, and returning from school, and while visiting another school or at a school-sanctioned activity and may be imposed if the student's behavior affects the school order. When suspension or expulsion is involved, notice, hearing, and appeal procedures shall conform to applicable legal requirements.

However, no local school board shall allow for the imposition of discipline, discrimination or disparate treatment against a student based on the student's race, religion or culture or because of the student's use of protective hairstyles or cultural or religious headdresses.

Racialized aggression defined as any aggressive act which can be characterized, categorized or which appears as such to be racial in nature is prohibited. A link to a statewide hotline for reporting such incidents is provided on the District Website located at (fill in web address for school district).

Information concerning a student's disciplinary record will be held in the strictest confidence.

Disciplinary actions taken will be recorded in an administrative log, and all types of suspensions or expulsions will be recorded in a separate file for each student.

Adopted: date of manual adoption

LEGAL REF.: 22-5-4.3 NMSA (1978)
22-35-3 NMSA (1978)
6.11.2.7 NMAC
6.11.2.8 NMAC
6.11.2.9 NMAC
6.11.2.10 NMAC
6.11.2.11 NMAC
6.11.2.12 NMAC

CROSS REF.: JIC - Student Conduct
JICA - Student Dress
JKA - Corporal Punishment
JKD - Student Suspension/Expulsion
JR - Student Records

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Policy Services

6

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Advisory 211

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Policy Services

7

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J-2350
STUDENT DRESS

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JICA

The Board recognizes that each student's mode of dress and grooming is a manifestation of personal style and individual preference. The Board will not interfere with the right of students and their parents to make decisions regarding their appearance except when their choices affect the educational program of the schools or the health and safety of others.

The Board authorizes the Superintendent to develop and enforce school regulations prohibiting student dress or grooming practices that:

- Present a hazard to the health or safety of the student or to others in the school.
- Materially interfere with school work, create disorder, or disrupt the educational program.
- Cause excessive wear or damage to school property.
- Prevent students from achieving their educational objectives.
- Represent membership in a gang.

Obscene language or symbols, or symbols of sex, drugs, or alcohol on clothing are expressly prohibited.

Adopted: date of manual adoption

LEGAL REF.: NMSA 22-5-4.3
6.11.2.9 NMAC

CROSS REF.: JICF - Secret Societies/Gang Activity
JK - Student Discipline

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Policy Services

8

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Advisory 212

NEW MEXICO SCHOOL BOARDS ASSOCIATION

Policy Services

9

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NONDISCRIMINATION / EQUAL OPPORTUNITY

The Board is committed to a policy of nondiscrimination and equal opportunity in relation to race, color, religion, sex, sexual orientation, age, national origin, and disability. This policy will prevail in all matters concerning staff members, students, the public, educational programs and services, and individuals with whom the Board does business. The Superintendent will appoint the compliance officers and/or Title IX Coordinators.

All reports or grievances regarding discrimination in employment other than those regarding discrimination on the basis of sex should be directed to the Superintendent's office of compliance. All complaints or reports of discrimination on the basis of sex shall be directed to the Title IX Coordinator per Policy ACA.

Adopted: date of manual adoption

- LEGAL REF.:
- 22-31-1 NMSA *et seq.*, School Athletic Equity Act
 - 28-1-2 NMSA *et seq.*
 - 20 U.S.C. 1092(f)(6)(A)(v), Sexual Assault
 - 20 U.S.C. 1400 *et seq.*, Individuals with Disabilities Education Act
 - 20 U.S.C. 1681, Education Amendments of 1972, Title IX
 - 20 U.S.C. 1703, Equal Employment Opportunity Act of 1972
 - 29 U.S.C. 794, Rehabilitation Act of 1973, (Section 504)
 - 34 CFR Part 106, Nondiscrimination on the basis of Sex in Education
 - 34 U.S.C. 12291(a)(8), (10), (30) Domestic Violence, Dating Violence, Stalking
 - 42 U.S.C. 2000, Civil Rights Act of 1964, Titles VI and VII
 - 42 U.S.C. 12101 *et seq.*, Americans with Disabilities Act

CROSS REF.: ACA - Nondiscrimination on the Basis of Sex

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Policy Services
10

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GBA - Equal Employment Opportunity
GCQF - Discipline, Suspension, and Dismissal of
Professional Staff Members
GDQD - Discipline, Suspension, and Dismissal of
Support Staff Members
IHBA - Special Instructional Programs and
Accommodations for Disabled Students
JB - Equal Educational Opportunities
JII - Student Concerns, Complaints, and Grievances
JJIB - Interscholastic Sports
JK - Student Discipline
JKD - Student Suspension/Expulsion
KED - Public Concerns/Complaints about Facilities or
Services

Advisory 213

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Policy Services

12

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DISCIPLINE, SUSPENSION, TERMINATION
AND DISCHARGE OF
PROFESSIONAL STAFF MEMBERS

GCQF

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 licensed school employee prior to the expiration of the current employment contract.
- "Terminate" means, in the case of a 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.

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Policy Services

13

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- "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.
- Racialized aggression defined as any aggressive act which can be characterized, categorized or which appears as such to be racial in nature. Such aggression is prohibited. A link to a statewide hotline for reporting such incidents is provided on the District Website located at (fill in web address for school district).

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:

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Policy Services

16

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- 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:

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- 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 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 licensed school employee employed to fill the position of a licensed school employee entering military service;
- A licensed school employee who is employed as a licensed school administrator; or
- An 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 (3) months from beginning employment duties.

Step 1 - Notice:

- Upon the Superintendent's determination of the existence of cause to terminate, and 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) working days of such request.
- The reasons shall not be publicly disclosed by the administration or 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 (1) year of employment 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 service and licensed educational assistants employed for more than one (1) year the following appeal procedure shall apply.

Step 2 - Appeal Requirements and Content:

- Termination may be appealed to the Governing Authority by a professional staff employee who has been employed for more than two (2) consecutive years and licensed educational assistants employed for more than one (1) 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 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 reasons why the staff member believes the decision is without just cause.
- ▲ A statement of the facts that the employee believes support this contention.

Step 3 - Appeal Procedure:

- The 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 Governing Authority.
 - ▲ Witnesses called may be questioned by the Governing Authority, the Superintendent or an appointed representative, and the employee or an appointed representative.

- ▲ The 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 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 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 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 Governing Authority's decision on termination final.

If the arbitration appeal is timely and complete, the 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.

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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 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 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 Governing Authority may each be accompanied by counsel.
 - The 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 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 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 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 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 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.

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Employee's Request for Hearing:

- An employee who receives notice of intent to recommend discharge may exercise the right to a hearing before the Governing Authority by giving the Superintendent written notice of that election within ten (10) working days of receipt of the notice of intent to recommend discharge.
- The 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 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 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 Superintendent shall be required to prove by preponderance of the evidence that just cause to discharge the 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 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 Governing Authority.
- The 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 Governing Authority shall take such action as is necessary in accordance with the Open Meeting Act.

Discharge - Arbitration Appeal Pursuant to 22-10A-28 NMSA (1978)

An employee aggrieved by a decision of the Governing Authority to discharge may appeal the decision to an arbitrator by doing the following: Submitting a written appeal to the Governing Authority within ten (10) working days from receipt of the written decision of the Governing Authority.

The Governing Authority may delegate responsibility for the arbitration to the Superintendent.

If the arbitration appeal is timely the 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 public school

is located to select an independent arbitrator within five (5) working days 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 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 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 Governing Authority may each be accompanied by counsel.
 - The 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 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 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 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 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 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
22-5-4.3 NMSA (1978)
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

NEW MEXICO SCHOOL BOARDS ASSOCIATION

Policy Services
28

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Advisory 214

NEW MEXICO SCHOOL BOARDS ASSOCIATION

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Policy Services

29

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

GDQD

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:

NEW MEXICO SCHOOL BOARDS ASSOCIATION

Policy Services
30

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• Absence without leave	• Incompetence or inefficiency
• Abuse of leave	• Insubordination
• Alcohol or drug impairment	• Neglect of duty
• Child abuse or molestation	• Unauthorized possession of a weapon on school grounds
• Discourteous treatment of the public	• Unauthorized use of school property
• Dishonesty	• Unlawful conduct
• Excessive absenteeism	• Use of illegal drugs
• Fraud in securing employment	• Violation of a directive of a supervisor
• Improper attitude	• Violation of a District policy or regulation

- Racialized aggression defined as any aggressive act which can be characterized, categorized or which appears as such to be racial in nature is prohibited. A link to a statewide hotline for reporting such incidents is provided on the District Website located at (fill in web address for school district).

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

NEW MEXICO SCHOOL BOARDS ASSOCIATION

Policy Services

32

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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

NEW MEXICO SCHOOL BOARDS ASSOCIATION

Policy Services

33

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administrator, the Superintendent, or, when appropriate, the 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 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 five (5) working days of such request.
- The reasons shall not be publicly disclosed by the administration or Governing Authority. *A local Board may terminate a nonlicensed school employee with less than one (1) year of employment for any reason it deems sufficient.*
 - For a nonlicensed school employee who has been employed for more than one (1) year the following appeal procedure shall apply.

Step 2-3 Appeal Requirements and Content:

NEW MEXICO SCHOOL BOARDS ASSOCIATION

Policy Services

34

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- Termination may be appealed to the Governing Authority by a nonlicensed school employee who has been employed for more than one (1) 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 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 4 - Appeal Procedure:

- The 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 Governing Authority.
- ▲ Witnesses called may be questioned by the Governing Authority, the Superintendent or an appointed representative, and the employee or an appointed representative.
- ▲ The 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 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 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 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 Governing Authority's decision on termination final.

If the arbitration appeal request is timely and complete, the 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 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 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 Governing Authority may each be accompanied by counsel.
 - The 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 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 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 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.: 22-5-4.3 NMSA (1978)
 22-10A-24 NMSA (1978)
 22-10A-25 NMSA (1978)
 22-10A-26 NMSA (1978)

CROSS REF.: DKA - Payroll Procedures/Schedules

NEW MEXICO SCHOOL BOARDS ASSOCIATION

Policy Services
 38

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Relevant Statutes and Citations

At the following string **New Mexico State School Discipline Laws and Regulations as of January 31, 2020** prepared by:

Child Trends
7315 Wisconsin Avenue
Suite 1200W
Bethesda, Maryland 20814
EMT Associates, Inc.
1631 Creekside Drive
Suite 100
Folsom, California 95630

The discipline laws and regulations presented in this compilation have been categorized by type of specific discipline issue covered, according to an organizational framework developed by the National Center for Safe and Supportive Learning Environments (NCSSLE). It may be useful as a reference source so long as the latest advisory changes from Policy Services are considered

<https://safesupportivelearning.ed.gov/sites/default/files/discipline-compendium/New%20Mexico%20School%20Discipline%20Laws%20and%20Regulations.pdf>

House Bill 29 **<https://nmlegis.gov/Sessions/21%20Regular/final/HB0029.pdf>**

House Bill 43 **<https://nmlegis.gov/Sessions/21%20Regular/final/HB0043.pdf>**

Senate Bill 80 **<https://nmlegis.gov/Sessions/21%20Regular/final/SB0080.pdf>**

Should the above string links leading to the bills being discussed not go directly to the bill, copy the string which follows the bill number, enter it into your browser and press enter. The browser should take you to the bill.

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