

POLICY SERVICES

ADVISORY

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CONTENTS

Policy Advisory No. 220GBEA – Staff Ethics

Policy Advisory No. 221GBEB — Staff Conduct

Policy Advisory No. 222GCF — Professional Staff Hiring

Policy Advisory No. 223GDF — Support Staff Hiring

**Policy Advisory No. 224GCFC — Professional Staff
.....Certification and Credentialing
.....Requirements
.....GCFC-E — Professional Staff
.....Certification and Credentialing
.....Requirements**

**Policy Advisory No. 225GDFA — Support Staff
.....Certification and Credentialing
.....Requirements
.....GCFA-E — Support Staff
.....Certification and Credentialing
.....Requirements**

**Policy Advisory No. 226GCQF – Discipline, Suspension,
.....Termination and Discharge of
.....Professional Staff Member**

**Policy Advisory No. 227GDQD – Discipline, Suspension,
.....Termination and Discharge of
.....Support Staff Member**

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

**Policy Advisory No. 228JLF — Reporting Child Abuse /
.....Child Protection**

Policy Advisory Discussion

Policy Advisory No. 220. GBEA – Staff Ethics. The only changes to this policy is the addition of legal reference 22-10A-2, which provides definitions for many terms used in the policy, and provides cross references to policies that support the implementation of this policy.

Policy Advisory No. 221. GBEB — Staff Conduct. The GB designation of the policy identifies it as a policy that applies to all personnel. The department of education chose to only provide ethical guidance to licensed staff. The policy GBEB is the proper location of the new Section of the School Personnel Act (the act) on investigation of ethical misconduct as found in House Bill 128 passed in the 2021 regular session of the New Mexico Legislature.

Some language has been added to point the policy toward all school district personnel and a side heading titled "Investigation and reporting of alleged ethical misconduct" has been added to provide guidance per the requirements of House Bill 128. The additions to the policy give direction for reporting and addressing ethical misconduct, specifically required time lines, designating who is to make the reports, how reports are to be maintained and what information is to be shared by the parties. The deletion of the last two sentences was made after a search of the references revealed the language was not applicable. Legal references and cross references have been added to reflect the connection between this policy and disciplinary action that can be taken by the school district although this factor was not emphasized by the statutory addition.

Policy Advisory No. 222. GCF — Professional Staff Hiring. Upon review of the changes made to 22-10A-5 in House Bill 128, it has been determined that policy GCF with regulation, and exhibits contained the relevant requirements. Minor word additions which do not change the content may be noted in the current policy recommendation. One part of the revised statute was added in the policy, permitting contract rescission or termination after the effective date of the statute. This addition should be taken note of by the Superintendent for consideration during and after contract consideration as regards any finding of child abuse or ethical misconduct. **The current Regulation, and Exhibits should be retained.**

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Policy Advisory No. 223. GDF — Support Staff Hiring. Upon review of the changes made to 22-10A-5 in House Bill 128, it has been determined that policy GDF with regulation, and exhibits contained the relevant requirements. One part of the revised statute has been added in the policy, permitting contract rescission or termination after the effective date of the statute. This addition should be taken note of by the Superintendent for consideration during and after contract consideration as regards any finding of child abuse or ethical misconduct. **The current Regulation, and Exhibits should be retained.**

Policy Advisory No. 224. GCFC — Professional Staff Certification and Credentialing Requirements. The current policy recommendation was only minimally modified per changes made to 22-10A-5 in House Bill 128. The change reflects the law makers being more definitive, narrowing the number of persons required to be fingerprinted by changing the operant language of having access to children on school premises to having contact with children or students on school premises. The statute also requires that the policy narrow the reporting requirements to convicted felonies or misdemeanors involving moral turpitude rather than reporting those felonies or misdemeanors simply involving moral turpitude resulting in any type of action. As can be seen, "convicted" is narrower in meaning than the phrase "resulting in any type of action".

GCFC-E was changed by language in Section 2 of new additions to the School Personnel Act (the act) which require a candidate for employment to swear they have never been investigated for certain things, haven't had action for license or certification taken against them and are not currently awaiting trial for certain offenses. Since the currently recommended exhibit was similar, Policy Services simply added the required New Mexico language and certain New Mexico offenses to those already indicated as being included. Some of the offenses may not be in the New Mexico list cited by statute in the new Section 2 of the act but this does not keep a district from asking the candidate about them since all are felonies or misdemeanors among those required to be reported to the Public Education Department.

Policy Advisory No. 225. G DFA, G DFA-E — Support Staff Certification and Credentialing Requirements. The policy and exhibit for support staff contains the same changes as those for the professional staff in GCFC and exhibit above except that a paragraph was added in G DFA regarding reporting that was not in the GCFC. This addition was the result of support staff being included in reporting by Section 2 of the act.

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Policy Advisory No. 226. GCQF – House Bill 128 contained some changes that should have been included in Policy Advisory 213 relative to GCQF, Termination and Discharge of Professional Staff. Policy Services had not digested House bill 128 when the advisories were prepared for House Bill 49 on radicalized aggression. In order to reduce the number of pages in this advisory and because each district just received a full copy of policy GCQF, Policy Services included only the side headings of those parts of the policy not effected by the changes, using four (4) asterisks (*) to denote the omitted language. The side headings and the content following with the changes underlined are shown in full.

GCQF was affected by the changes to 22-10A-24 NMSA which removed the prohibitions on disclosure of reasons for termination and provided that the termination appeal is not to be recorded. The important thing here is that the reasons for termination can be disclosed. 22-10A-25 NMSA then provided that parties to the discharge arbitration appeal may make a record of the arbitration, but it is not an official transcript.

Policy Advisory No. 227. GDQD –House Bill 128 contained some changes that should have been included in advisory 214 referent to GDQD, termination of support staff. Policy Services had not digested House bill 128 when the advisories were prepared for House Bill 49 on radicalized aggression. In order to reduce the number of pages in this advisory and because each district just received a full copy of policy GDQD, Policy Services has only included the headings of those parts of the policy not effected by the changes using four (4) asterisks (*) to denote the omitted language. The side headings and the content following with the changes underlined are shown in full.

GDQD is affected by the changes to 22-10A-24 NMSA which removes the prohibitions on disclosure of reasons for termination of an employee and provides that the parties to the termination arbitration appeal may make a record of the arbitration but it is not an official transcript. The important thing here is that the reasons for termination can be disclosed. Please recognize that by definitions in 22-10A-2 of the act discharge means severing the employment relationship with licensed school employees prior to expiration of the current employment contract and thereby is not a term used for support staff. The title of the policy, however, is a National School Boards Association determined title used in the National Education Policy Network system of naming policies and contains the word discharge.

Policy Advisory No. 228. JLF — Reporting Child Abuse / Child Protection.

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Policy Services

4

Section I of the new addition to the School Personnel Act (the act) required that policy services make four (4) significant changes to policy JLF. The first changed the reporting persons from only licensed school employees to "all school district personnel, school employees, school volunteers, contractors and contractors' employees." The second makes the training component applicable to all of those persons. Third, the act adds ethical misconduct, professional responsibilities to the training component. Last, it directs the public education department to prepare and distribute training materials for the purposes of the training.

Please Note: Since the Compilation Commission has not yet given the new sections of the School Personnel Act numerical citations, the citations will be added by Policy Services upon determination. As the policies are adopted Policy Services will add these to the on-line manual of each school district.

Materials of a legal nature in support of this advisory may be found following the text of the policies or at the websites cited. If you have any questions, or requests call Policy Services at (505) 469-0193 or E-mail Dr. Donn Williams, Policy Services Director at [nmsbapolicy@cox.net].

Advisory 220

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Policy Services

(Statement of Ethics for School Employees)

We, professional educators of New Mexico, affirm our belief in the worth and dignity of humanity. We recognize the supreme importance of the pursuit of truth, the encouragement of scholarship, and the promotion of democratic citizenship. We regard as essential to these goals the protection of freedom to learn and to teach with the guarantee of equal educational opportunity for all. We affirm and accept our responsibility to practice our profession according to the highest ethical standards. We acknowledge the magnitude of the profession we have chosen and engage ourselves, individually and collectively, to judge our colleagues and to be judged by them in accordance with the applicable provisions of this code.

Principle I: Commitment to the student. We measure success by the progress of each student toward achievement of their maximum potential. We therefore work to stimulate the spirit of inquiry, the acquisition of knowledge and understanding and the thoughtful formulation of worthy goals. We recognize the importance of cooperative relationships with other community institutions, especially the home. In fulfilling our obligation to the student, we:

- deal justly and considerately with each student;
- encourage the student to study and express varying points of view and respect the student's right to form their own judgment;
- conduct conferences with or concerning students in an appropriate place and manner;
- seek constantly to improve learning facilities and opportunities.

Principle II: Commitment to the community. We believe that patriotism in its highest form requires dedication to the principles of our democratic heritage. We share with all other citizens the responsibility for the

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development of sound public policy. As educators, we are particularly accountable for participating in the development of educational programs and policies and for interpreting them to the public. In fulfilling our obligations to the community, we:

- share the responsibility for improving the educational opportunities for all;
- recognize that each educational institution has a person authorized to interpret its official policies;
- acknowledge the right and responsibility of the public to participate in the formulation of educational policy;
- evaluate through appropriate professional procedures conditions within a district or institution of learning, make known serious deficiencies and take action deemed necessary and proper;
- assume full political and citizenship responsibilities, but refrain from exploiting the institutional privileges of our professional positions to promote political candidates of [or] partisan activities;
- protect the educational program against undesirable infringement and promote academic freedom.

Principle III: Commitment to the profession. We believe that the quality of the services of the education profession directly influence[s] the future of the nation and its citizens. We therefore exert every effort to raise educational standards, to improve our service, to promote a climate in which the exercise of professional judgment is encouraged, to demonstrate integrity in all work-related activities and interactions in the school setting and to achieve conditions which attract persons worthy of the trust to careers in education. Aware of the value of united effort, we contribute actively to the support, planning and programs of our professional organizations. In fulfilling our obligations to the profession, we:

- recognize that a profession must accept responsibility for the conduct of its members and understand that our own conduct may be regarded as representative of our profession;
- participate and conduct ourselves in a responsible manner in the development and implementation of policies affecting education;

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- cooperate in the selective recruitment of prospective teachers and in the orientation of student teachers, interns and those colleagues new to their positions;
- accord just and equitable treatment to all members of the profession in the exercise of their professional rights and responsibilities;
- refrain from assigning professional duties to nonprofessional personnel when such assignment is not in the best interest of the student;
- refrain from exerting undue influence based on the authority of our positions in the determination of professional decisions by colleagues;
- keep the trust under which confidential information is exchanged;
- make appropriate use of the time granted for professional purposes;
- interpret and use the writings of others and the findings of educational research with intellectual honesty;
- maintain our integrity when dissenting by basing our public criticism of education on valid assumptions as established by careful evaluation of facts;
- respond accurately to requests for evaluation of colleagues seeking professional positions;
- provide applicants seeking information about a position with an honest description of the assignment, the conditions of work and related matters.

Principle IV: Commitment to professional employment practices. We regard the employment agreement as a solemn pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service. Sound professional personnel relationships with governing boards are built upon integrity, dignity and mutual respect between employees, administrators and local school boards. In fulfilling our obligations to professional employment practices, we:

- apply for or offer a position on the basis of professional and legal qualifications;
- apply for a specific position only when it is known to be vacant and refrain from such practices as underbidding or commenting adversely about other candidates;

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- fill no vacancy except where the terms, conditions and policies are known;
- adhere to and respect the conditions of a contract or to the terms of an appointment until either has been terminated legally or by mutual consent;
- give prompt notice of any change in availability of service, in status of applications or in change in position;
- conduct professional business through recognized educational and professional channels.

Adopted: date of manual adoption

LEGAL REF.: 22-10A-2 NMSA

6.60.9.8 NMAC

6.60.9.9 NMAC

CROSS REF.: GBEB - Staff Conduct

GCQF - Discipline, Suspension, Termination and Discharge of Professional Staff Members

GDQF - Discipline, Suspension, Termination and Discharge of Support Staff Members

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Policy Services

Advisory 221

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Policy Services

10

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

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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

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Policy Services

12

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;

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- 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

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(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;

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- 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;

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- 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 regard 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 department 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,

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Policy Services

rules, and regulations of the District, and carry out all applicable orders issued by the Superintendent.

Licensed personnel are to follow statements of ethics and standards of conduct indicated in NMAC 6.60.9.8 NMAC and 6.60.9.9 NMAC.

All school district personnel, employees and school volunteers are directed to make themselves aware of and follow federal and state laws, school board policies, procedures and regulations regarding ethics and conduct.

Investigation and Reporting of Alleged Ethical Misconduct

Any school district personnel, school employee, school volunteer, contractor or contractor's employee who knows or has a reasonable suspicion that a child or student has been subject to ethical misconduct by any school district personnel, school employee, school volunteer, contractor or contractor's employee shall report the matter to:

- the superintendent; or
- the department.

If a superintendent receives a report of ethical misconduct, the superintendent shall immediately transmit to the department by telephone the facts of the report and the name, address and telephone number of the reporter. The superintendent shall transmit the same information in writing within forty-eight hours. A school shall take immediate steps to ensure the safety of enrolled students. The identity of any alleged victims will be protected.

A written report shall contain the name, address and age of the child or student; the child's or student's parents, guardians or custodians; the school district personnel, school employee, school volunteer, contractor or contractor's employee who is alleged to have committed ethical misconduct; and any evidence of ethical misconduct, including the nature and extent of any injuries and other information that the maker of the report believes might be helpful to investigate a report of ethical misconduct. The written report shall be submitted upon a standardized form developed by the department. All written reports are to be filed by date and name and are to include any information received or gathered in any investigation. Such records are to be made available to the office of investigation: the Superintendent, Department or Law Enforcement

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The person making the report shall be notified by the office receiving the report within five days (mailed within five days) by mail or other notification that the report is being investigated.

The Superintendent shall investigate all allegations of ethical misconduct about any school district personnel, school employee, school volunteer, contractor or contractor's 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 (30) days following the separation from employment or immediately if ~~knowledge the finding~~ of the ethical misconduct is sexual misconduct with 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 district personnel, school employee, school 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.

The secretary of education may initiate action to suspend, revoke or refuse to renew the license of:

- a superintendent who fails to report ethical misconduct;
- any licensed school district personnel or licensed school employee who fails to report child abuse or neglect pursuant to Section 32A-4-3 NMSA 1978;
- any licensed school district or school employee who fails to report ethical misconduct in accord with the School Personnel Act and statutes.

~~A person's 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.~~

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Adopted: date of manual adoption

LEGAL REF.: School Personnel Act new section 1&2

22-10A-2 NMSA (1978)

22-5-4.4 NMSA (1978)

22-10A-5 NMSA (1978)

6.60.9.8 NMAC

6.60.9.9 NMAC

6.68.2.1 NMAC *et seq.*

6.68.3.1 NMAC *et seq.*

CROSS REF.: GBEA - Staff Ethics

GCF - Professional Staff Hiring

GCQF - Discipline, Suspension, Termination and Discharge of Professional Staff Members

GDQF - Discipline, Suspension, Termination and Discharge of Support Staff Members

JIC - Student Conduct

JK - Student Discipline

KFA - Public Conduct on School Property

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Policy Services

20

Advisory 222

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Policy Services

21

**^G-3450 ©
PROFESSIONAL STAFF HIRING**

GCF

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~~ be eligible for licensure 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~~ licensure .
- Each candidate shall be requested to complete a consent-and-release form regarding conduct of a background investigation.
- Each candidate shall be required to provide (2) two fingerprint cards or equivalent 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.

<p><i>Note:</i> This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.</p>

Policy Services

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

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

A public school may terminate an individual's employment or contract or rescind an applicant's offer of employment or offer of a contract if the applicant is offered or commences employment with a public school after the effective date of this 2021 act and information regarding the applicant's history of child abuse or ethical misconduct that is determined to disqualify the applicant from employment or a contract is subsequently obtained by the public school.

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.

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 (10) 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.: School Personnel Act new section 1&2
22-10A-5 NMSA (1978)
28-1-2 NMSA *et seq.*

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Advisory 223

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

24

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.

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

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.

A public school may terminate an individual's employment or contract or rescind an applicant's offer of employment or offer of a contract if the applicant is offered or commences employment with a public school after the effective date of this 2021 act and information regarding the applicant's history of child abuse or ethical misconduct that is determined to disqualify the applicant from employment or a contract is subsequently obtained by the public school.

Adopted: date of manual adoption

LEGAL REF.: School Personnel Act new section 1&2
22-10A-5 NMSA (1978)
28-1-2 NMSA *et seq.*
6.41.4.9 NMAC

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

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Advisory 224

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

27

**PROFESSIONAL STAFF CERTIFICATION
AND CREDENTIALING REQUIREMENTS**

(Fingerprinting Requirements)

New Hires

All licensed personnel 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. The public school shall pay the cost of obtaining fingerprint or criminal history records for the licensed personnel. A contractor or contractor's employee, or a school volunteer who will have unsupervised ~~access to~~ contact with children or 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.

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

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 any felony or misdemeanor involving moral turpitude of school district personnel, or a licensed school employee, that results in any type of action against the employee .

Adopted: date of manual adoption

LEGAL REF.: School Personnel Act new section 1&2

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

GCF - Professional Staff Hiring

GCG - Part-Time and Substitute Professional Staff
Employment

IJOC - School Volunteers

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

29

EXHIBIT

EXHIBIT

PROFESSIONAL STAFF CERTIFICATION AND CREDENTIALING REQUIREMENTS

Name Position

I, _____, being duly sworn, do hereby certify that I have never been ~~convicted of or admitted in open court or pursuant to a plea agreement committing~~, and am not now awaiting trial for committing, any of the following criminal :

- under investigation for, or been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated (see list below);
- have never been under investigation for, or been found to have violated, any ethical rule or policy approved by a former employer that previously employed me, unless the allegations were false or unsubstantiated; or
- have never had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; and
- am not now awaiting trial for committing any of the following criminal offenses in the state of New Mexico or similar offenses in any other jurisdiction.

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Sexual abuse of a minor Incest First- or second-degree murder Kidnapping Arson Sexual a Assault Sexual exploitation of a minor Felony offenses involving contributing to the delinquency of a minor Commercial sexual exploitation of a minor Felony offenses involving sale, distribution, or transportation of, offer to sell, transport, or distribute, or conspiracy to sell, transport, or distribute marijuana or dangerous or narcotic drugs Distribution of pornography Harassment Enticement	Felony offenses involving the possession or use of marijuana, dangerous drugs or narcotic drugs Misdemeanor offenses involving the Possession or use of marijuana or dangerous drugs Burglary in the first degree Burglary in the second or third degree Aggravated or armed robbery Robbery Child abuse <u>or abandonment</u> Sexual conduct with a minor Molestation of a child Manslaughter Assault or Aggravated assault Exploitation of minors involving drug offenses <u>Human trafficking</u> <u>Prostitution</u>
--	---

Employee Applicant signature

Date signed

Subscribed, sworn to, and acknowledged before me by _____

_____, this _____ day of _____,
20____,

in _____ County, New Mexico.

My Commission Expires

Notary Public

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Advisory 225

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

32

**SUPPORT STAFF CERTIFICATION AND
CREDENTIALING REQUIREMENTS**

(Fingerprinting Requirements)

An applicant offered employment and a contractor or contractor's employee, or a school volunteer who will have unsupervised ~~access to~~ contact with children or 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 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.

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

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."

The Superintendent shall report to the Public Education Department any known conviction of any felony or misdemeanor involving moral turpitude of school district personnel, a school employee, a school volunteer, a contractor or and contractor's employee.

Adopted: date of manual adoption

LEGAL REF.: School Personnel Act new section 1&2
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

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

34

EXHIBIT

EXHIBIT

SUPPORT STAFF CERTIFICATION AND CREDENTIALING REQUIREMENTS

Name Position

I, _____, being duly sworn, do hereby certify that I have never been ~~convicted of or admitted in open court or pursuant to a plea agreement committing, and am not now awaiting trial for committing, any of the following criminal :~~

- under investigation for, or been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated (see list below);
- have never been under investigation for, or been found to have violated, any ethical rule or policy approved by a former employer that previously employed me, unless the allegations were false or unsubstantiated; or
- have never had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; and
- am not now awaiting trial for committing any of the following criminal offenses in the state of New Mexico or similar offenses in any other jurisdiction.

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Sexual abuse of a minor Incest First- or second-degree murder Kidnapping Arson Sexual a Assault Sexual exploitation of a minor Felony offenses involving contribut- ing to the delinquency of a minor Commercial sexual exploitation of a minor Felony offenses involving sale, distribution, or transportation of, offer to sell, transport, or distribute, or conspiracy to sell, transport, or distribute marijuana or dangerous or narcotic drugs Distribution of pornography Harassment Enticement	Felony offenses involving the possession or use of marijuana, dangerous drugs or narcotic drugs Misdemeanor offenses involving the Possession or use of marijuana or dangerous drugs Burglary in the first degree Burglary in the second or third degree Aggravated or armed robbery Robbery Child abuse <u>or abandonment</u> Sexual conduct with a minor Molestation of a child Manslaughter Assault or Aggravated assault Exploitation of minors involving drug offenses <u>Human trafficking</u> <u>Prostitution</u>
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Employee Applicant signature

Date signed

Subscribed, sworn to, and acknowledged before me by _____

_____, this _____ day of _____,
20____,

in _____ County, New Mexico.

My Commission Expires

Notary Public

Note: This material is written for informational purposes only, and not as
legal advice. You may wish to consult an attorney for further explanation.

Advisory 226

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

37

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

GCQF

Categories of Misconduct

General Provisions for Discipline

Minor Discipline

Step 1 - Notice:

Step 2 - Hearing:

Step 3 - Decision (in writing):

Appeal of Minor Discipline

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

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

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:

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.

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

▲ 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)

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

Notice:

Employee's Request for Hearing:

<i>Note:</i> This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.
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Preliminary Information

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:

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Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

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~~A record shall be made of the hearing and each party may order the record at the expense of the party. Either party desiring a record of the arbitration proceedings may, at the party's own expense, record or otherwise provide for a transcript of the proceedings; provided, however, that the record so provided shall not imply any right of automatic appeal or review.~~

- 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

Adopted: date of manual adoption

- LEGAL REF.: School Personnel Act new section 1&2
- 22-5-4.3 NMSA
- 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

<p><i>Note:</i> This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.</p>

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

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

Advisory 227

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

44

^ & ^ & ^G-9300 ©
**DISCIPLINE, SUSPENSION, TERMINATION
AND DISCHARGE OF
SUPPORT STAFF MEMBERS**

GDQD

Categories of Misconduct

General Provisions for Discipline are as follows:

Minor Discipline

Step 1 - Notice and Hearing:

Step 2- Decision (in writing):

Appeal of Minor Discipline

**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:

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

- 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:

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.

<p><i>Note:</i> This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.</p>

▲ 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

Note: This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.

Policy Services

47

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.

<p><i>Note:</i> This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.</p>

- 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.~~ Either party desiring a record of the arbitration process shall have the right to an automatic appeal or review.
- 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.: School Personnel Act new section 1&2
 22-5-4.3 NMSA
 22-10A-24 NMSA (1978)
 22-10A-25 NMSA (1978)
 22-10A-26 NMSA (1978)

CROSS REF.: DKA - Payroll Procedures/Schedules

<p><i>Note:</i> This material is written for informational purposes only, and not as legal advice. You may wish to consult an attorney for further explanation.</p>

Advisory 228

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Policy Services

50

**REPORTING CHILD ABUSE /
CHILD PROTECTION**

All ~~licensed school district personnel, school employees, school volunteers, contractors and contractors' employees~~ shall be required to complete training in the detection and reporting of child abuse and neglect, ~~including ethical misconduct, professional responsibilities,~~ sexual abuse and assault, and substance abuse. This requirement shall be completed ~~by all licensed within the school district employee's, school employee's, school volunteer's, contractors and contractors' employees during the 2014-2015 school year and all licensed employees hired thereafter during the first year of employment by a school district.~~ The training information shall be available through the department of education.

Every person, including ~~any schoolteacher or a school official~~ school employee licensed or unlicensed, who has information that is not privileged as a matter of law, who *knows or has a reasonable suspicion* that a child is an abused or a neglected child shall report the matter immediately to:

- New Mexico Child Abuse Hotline (1-855-333-SAFE or #SAFE from a cell phone [#SAFE = #7233]);
- a local law enforcement agency;
- the department office in the county where the child resides; or
- a tribal law enforcement or social services agency for any Indian child residing in Indian country.

The report shall contain the following information:

- The names and addresses of the minor, the parents, or the person or persons having custody of such minor, if known.
- The minor's age and the nature and extent of any injuries or physical neglect, including any evidence of previous injuries or physical neglect.

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- Any other information that such person believes might be helpful in establishing the cause of the injury or physical neglect.

The school administrator should be informed following the immediate report abuse, and the "Agency Referral Form and Procedure" should be used in order to have documentation and follow up (see the exhibit below).

A school administrator and/or their designee may permit a member of a law enforcement agency or an employee of the Human Services Department to interview the child with respect to a report without the permission of the child's parent, guardian or custodian.

A person who fails to report abuse as provided in 30-6-4 NMSA 1978 is guilty of a misdemeanor.

Adopted: date of manual adoption

LEGAL REF.: 22-10A-32 NMSA (1978)
22-5-4.2 NMSA (1978)
30-6-4 NMSA (1978)
32A-4-2 NMSA (1978)
32A-4-3 NMSA (1978)

CROSS REF.: GBEB - Staff Conduct
GBEBB - Staff Conduct With Students
JKA - Corporal Punishment

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EXHIBIT

EXHIBIT

**REPORTING CHILD ABUSE /
CHILD PROTECTION**

SUSPECTED ABUSE/NEGLECT

To: **Law enforcement agency** - New Mexico Child Abuse Hotline
(1-800-797-3260)
(1-855-333-SAFE or #SAFE from a cell phone [#SAFE = #7233])

Student's name _____ Birth date _____ Sex _____

Address _____

Names of parents/guardians _____

School _____ Grade _____ Teacher _____

Description of injury (use reverse side of form if necessary) _____

Referral source: Name _____

Address _____ Position _____

Symbols:

Severity:

- | | | | |
|------|------------------|-------|----------|
| A = | Abrasion | (1) = | Mild |
| Bl = | Blister | (2) = | Moderate |
| Bu = | Burn | (3) = | Severe |
| Br = | Bruise | | |
| La = | Laceration | | |
| Le = | Lesions | | |
| S = | Scar | | |
| R = | Rash | | |
| V = | Vermin | | |
| O = | Other (describe) | | |

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Signature and Title of Person Making the Report

Date

To whom reported _____ Date of oral report _____

Copy filed in school superintendent and nurse's office

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Policy Services

54

Relevant Statutes and Citations

School Personnel Act new section 1&2

<https://nmlegis.gov/Sessions/21%20Regular/final/HB0128.pdf>

22-5-4.2 NMSA Child Abuse-- Report Coordination--Confirmation

22-10A-2 NMSA Definitions-- as used in the School Personnel Act

22-10A-5 NMSA Background Checks--Known Convictions--Alleged Ethical Misconduct--Reporting Required--Penalty for Failure to Report

22-10A-24 NMSA Termination Decisions--Procedures

22-10A-25 NMSA Appeals--Independent Arbitrations

22-10A-32 NMSA School District Personnel, school employees, school volunteers, contractors and contractors' employees

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Policy Services