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June 16, 2014

MEMORANDUM

TO: Legislative Education Study Committee
FR: Kevin Force
RE: STAFF BRIEF: ADMINISTRATIVE RULEMAKING

Proposed Rules:

- **5.7.20, Legislative Lottery Scholarship Program**
- **6.50 NMAC, Primary and Secondary Education, Insurance (Includes Parts 6.50.1 through 6.50.18, although *substantive* revision is not proposed for all parts.)**

Adopted Rules:

- **6.8.10 NMAC, Compulsory School Attendance**
- **6.12.6 NMAC, School District Wellness Policy**
- **6.12.7 NMAC, Bullying Prevention**

Proposed Rules

5.7.20 Legislative Lottery Scholarship Program

In the April 15, 2014 issue of the *New Mexico Register*, the Higher Education Department (HED) published a Notice of Public Hearing, announcing the proposed repeal and replacement of rules pertaining to the Legislative Lottery Scholarship Program, at 5.7.20 NMAC, in accordance

with recently enacted statute.¹ (See **Attachment 1, HED Notice of Public Hearing, 5.7.20 NMAC, 04/15/14.**) The Notice solicited comments on the rule and announced the public hearing, held on May 19, 2014, in the New Mexico State Capitol.

LESC staff have prepared a report on the lottery program and the recent changes both to the law and the implementing rules. (See Staff Brief: Legislative Lottery Scholarship.)

6.50 NMAC, Primary and Secondary Education, Insurance

In the March 14, 2014 issue of the *New Mexico Register*, the New Mexico Public Schools Insurance Authority (NMPSIA) published a Notice of Public Hearing, announcing the proposed repeal and replacement of its entire body of rules, 6.50.1 through 6.50.18 NMAC, in accordance with changes to law. (See **Attachment 2, NMPSIA Notice of Public Hearing, 6.50.1 through 6.50.18 NMAC, 03/14/14.**) The Notice solicited comments on the rules and announced the public hearing, which was held on May 1, 2014, at the NMPSIA Board meeting in Albuquerque. A brief synopsis of the proposed changes follows:

In all parts:

- certain sections were revised for clarity and concision without substantive change to the provisions themselves;
- definitions and provisions for “charter schools” were added, as these rules originally were adopted before NMPSIA offered coverage to charter schools; and
- “Due Process Reimbursement Coverage”² has been included, as that coverage has been made available since last the rules were revised.

6.50.1, General Provisions

- All references to “pre-existing conditions” were proposed to be removed because, under the *Affordable Care Act (ACA)*, insurers may no longer limit coverage due to prior conditions or treatment; and
- “eligible dependents” was changed to include dependent children under the age of 26, and the requirement that step-children be a resident of the same household as the primary employee was eliminated.

6.50.2, Contracts for Purchase of Professional Services and Insurance

Definitions for “group health insurance” and “risk-related coverage” were removed. “Risk-related coverage” is now defined in Part 6.50.1, as is “employee benefits coverage,” which replaces “group health insurance.”

¹ Laws 2014, Chapter 80.

² “Due Process Reimbursement Coverage” means the reimbursement of a school district’s or charter school’s expenses incurred as a result of a due process hearing under 22-29-12 NMSA 1978.

6.50.3, Procurement of Coverage for Risk-Related Exposures, Employee Benefits Programs and Due Process Reimbursement Coverage

This part proposes updates to reflect coverage that is currently available and, as noted above, add due process reimbursement coverage.

6.50.4, Other Educational Entities³ Participation

This part proposes to update changes in requirements for joining the Authority, requiring:

- the submission of financial and benefit information that meets board standards;
- payment of an excess premium deposit of 10 percent of the total first annual premium for selected coverage; and
- other educational entities wishing to participate in only some of the authority's coverage to apply for waivers, as currently is required of charter schools and school districts.

Other changes to this part include:

- disallowing other educational entities to voluntarily leave the authority after less than three years of membership;
- the addition of procedures for:
 - other educational entities to request to exit the authority;
 - dealing with violators of authority rules or policies, or those who have poor loss histories, or entities which evidence clear signs of fiscal irresponsibility; and
- the consolidation of penalties that may be imposed upon other educational entities that fail to participate after joining the authority.

Part 6.50.5, Notice of Risk Related, Employee Benefits and Due Process Reimbursement Coverages

Proposed changes to this part include:

- requiring members to report exposure information in December of each year, to include:
 - property values;
 - vehicle counts;
 - payroll;
 - average daily attendance;
 - budgets; and
 - new or hazardous exposure;

³ "Other educational entities" means those institutions of higher learning listed in Article 12, Section 11 of the Constitution of New Mexico, the New Mexico Military Institute, the New Mexico School for the Blind and Visually Impaired, the New Mexico School for the Deaf, as well as other state diploma, degree-granting and certificate-granting postsecondary educational institutions and regional cooperatives.

- the imposition of a final deadline for filing amended or additional exposure information of the second Friday in February;
- the addition of penalties for over- or underreporting exposure information; and
- the inclusion of due process reimbursement coverage.

Part 6.50.6, Determination of Premiums for Employee-Benefits, Risk-Related and Due Process Reimbursement Coverages

The rulemaking proposes to clarify, in this part, that the terms of the insurance policy or memorandum of coverage control any disputes over coverage, not the notice of coverage outlining benefits.

Part 6.50.7, Determination of Premiums for Employee-Benefits, Risk-Related and Due Process Reimbursement Coverages

The changes proposed to this section consist of the renumbering of paragraphs, for the sake of clarity.

6.50.8, Employee-Benefit and Risk-Related Premium Payments

The changes to this section propose to:

- eliminate the rule for payment of premiums for workers’ compensation risk-related coverage, currently due by July 31 of the billing year;
- add provisions regarding the payment of premiums for employee benefits coverage, so that each member or individual participant is invoiced for premiums that are due, in full, within 10 days after billing, and no later than the tenth day of the month for which coverage is intended; and
- require full payment of a disputed bill before the filing of a statement requesting reimbursement.

6.50.10, Employee Benefit Coverage Enrollment Policy

Proposed changes to this section include:

- in section 6.50.10.6, “Objective,” the detailed list of rules governing enrollment policies and conflicts between contracts, school policies, local policies has been removed and replaced with this simple statement of objective:

“The objective of this part is to establish the enrollment policy for all persons or entities authorized to participate in the authority's employee benefits coverage.”

- the addition of definitions for:

- “actively at work,” which means:
 - performing the material duties of one’s occupation at your employer’s usual place of business;
 - being absent from work for a regularly scheduled day off, holiday, or vacation day; or
 - being capable of active work on the day before the effective date of our insurance or increase in insurance; and
- “employee,” which, pertaining to this part only, means a full-time employee, or a person employed and paid by, and working for, the participating entity for 20 or more hours per week during the academic school term or terms, and includes board and governing body members of participating entities and the authority;
- disallowing late enrollment for medical benefits;
- allowing part-time employees who work between 15 and 20 hours per week to enroll if the authority member has passed a resolution agreeing to provide benefits to part-time employees;
- allowing evidence other than a birth certificate for permission to enroll a newborn infant, which must be submitted within 31 days from the first day of the month following the birth;
- allowing an employee to drop a dependent who is 18 years or older without dropping any other eligible dependents;
- limitation of coverage offered to retirees to voluntary life, only; and
- removal of references to pre-existing conditions.

6.50.14, Participating Entity Workers’ Compensation Policy Statement

Prior to the proposed rule, this part contained a reference/link to a Form Policy Statement that has been removed in favor of including the language from the Form Policy Statement directly into this part of the rule. This Form Policy Statement will also be included on the authority’s website.

Adopted Rules

The May 15, 2014 issue of the *New Mexico Register* contained the final adoption of amendments to several sections of the *Administrative Code*:

- **6.8.10 NMAC, Compulsory School Attendance;**
- **6.12.6 NMAC, School District Wellness Policy; and**
- **6.12.7 NMAC, Bullying Prevention.**

The Notice of Proposed Rulemaking was published in the Register on February 28, 2014 and, soliciting comment on the rules, noted that the Public Education Department (PED) would conduct a public hearing March 31, 2014, in Mabry Hall of the Jerry Apodaca Education Building, Santa Fe.

6.8.10 NMAC, Compulsory School Attendance

This rulemaking (see **Attachment 3, Adopted Rule, Compulsory School Attendance, 5/15/14**) requires school districts to include in their written attendance policies provision for:

- certain excused absences for pregnant and parenting students, as well as a time period equivalent to the time of a student’s excused absence, which would allow a student to make up missed work, including:
 - at least 10 days of excused absences for a student who provides documentation of the birth of the student’s child;
 - excused absences for any additional days deemed medically necessary by the pregnant or parenting student’s physician; and
 - four additional days of excused absences per semester, over the number of excused absences allowed for all students, if the student in question can document their pregnancy or parenthood of a child under the age of 13 who needs care;
- clear communication that the pregnant or parenting student is responsible for communicating the student’s status as a parent to school personnel, if the student so chooses to disclose this status; and
- copies of pregnant and parenting student absence policies to be provided to all students in middle, junior high, and high schools.

The amendments adopted by this rulemaking arise from legislation enacted during the 2013 regular legislative session.⁴

6.12.6 NMAC, School District Wellness Policy

The amendments adopted by this rulemaking (see **Attachment 4, Adopted Rule, School District Wellness Policy, 5/15/14**) include:

- removal of defined term, “tactical emergency response plan” and its replacement with the term “Emergency Operation Plan,” which means that the document, as part of a school safety plan:
 - explains functions, resources, and procedures for responding to and supporting crisis, emergency, terrorist-response, and disaster operations;
 - details risk assessments;
 - establishes procedures to manage an emergency before, during, and after the event has occurred; and
 - includes emergency routes and staff assignments as they relate to immediate action, delayed action, mitigating action, and faculty evacuation and reentry; and
- a requirement that school safety plans be included in the school wellness policy, and that they:

⁴ See Laws 2013, Chapter 198.

- focus on supporting school as a healthy and safe learning environment;
- be submitted to PED for approval on a three-year cycle; and
- include, at a minimum:
 - an introduction;
 - school policies and procedures;
 - prevention; and
 - the school Emergency Operation Plan.

6.12.7 NMAC, Bullying Prevention

This rulemaking (see **Attachment 5, Adopted Rule, Bullying Prevention, 5/15/14**) contains a number of amendments that specifically add requirements for the prevention of cyberbullying to these rules, as well as certain administrative amendments, including:

- changes to the scope of the rule, which formerly applied to “all public schools, including charter schools, and state supported educational institutions,” so that the rule now applies to local school boards and all public schools, including charter schools;
- the addition of Section 22-2-21, “Bullying and Cyberbullying Prevention Programs,” to the statutory authority of the rule; and
- the addition of bullying prevention programs to the objective of the rule, a more specific goal than the current objective, which speaks only of “address[ing] bullying of students by adopting and implementing policies.”

Provisions specifically addressing the issue of cyberbullying include:

- a definition of “cyberbullying,” which means electronic communication that:
 - targets a specific student;
 - is intended to be seen by the targeted student, and is in fact seen by, or disclosed to, that student; and
 - creates such a severely and pervasively hostile environment so as to substantially interfere with the student’s education;
- a definition of “public school,” which cross-references the definition found in the *Public School Code* and which includes charter schools;⁵
- the removal of reference to “charter schools” in the definition of “local school board”;
- a requirement that local school boards have cyberbullying *policies and programs* in effect beginning with school year 2013-2014;
- specific requirements for bullying prevention *policies*, including:

⁵ 22-1-2(L) NMSA 1978. “Public school” means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school, or any combination of those and includes a charter school.

- an absolute prohibition of cyberbullying;
 - inclusion of the anti-cyberbullying policies in anti-bullying materials to be disseminated to students, parents, and school employees and administrators;
 - procedures for reporting cyberbullying;
 - consequences for engaging in cyberbullying, compliant with the state and federal *Individuals with Disabilities Education Act* requirements; and
 - a requirement that all school staff report incidents of cyberbullying;
- specific requirements for cyberbullying prevention *policies*, including required:
 - training for all school employees on how to recognize signs of cyberbullying;
 - reporting of cyberbullying, or reasonable suspicions of such, to either or both the principal or charter school administrator, and the local superintendent;
 - promptly initiated investigations of any reported activity; and
 - prompt disciplinary action in response to confirmed cyberbullying, with the proviso that such action be by the least restrictive means necessary, and which may include counseling or mediation, or other discipline consistent with the rights of the students involved;
 - a requirement that all public schools implement bullying and cyberbullying prevention *programs*;
 - a requirement that all local school boards submit to PED assurances of:
 - the adoption and implementation of the required anti-bullying and cyberbullying *policies*;
 - review any necessary revision of disciplinary *policies* to ensure that they address cyberbullying; and
 - implementation of cyberbullying training for school employees; and
 - a requirement that all local school boards and charter schools submit to PED assurances of the implementation of bullying and cyberbullying prevention *programs*.⁶

The amendments adopted in this rulemaking arise from legislation enacted during the 2013 regular legislative session.⁷

There is some ambiguity in the rulemaking regarding the extent to which the requirements of the rule apply to charter schools. This ambiguity arises out of the definitions of “public school” and “local school board” as well as the use of the terms “policy” and “program.”

⁶ It should be noted that, by removing reference to “charter schools” in the definition of “local school board,” it appears as if the duty to assure PED of implementation of the required programs does not include, for charter schools, the review and revision of discipline policies to address cyberbullying, or the implementation of training for charter school employees.

⁷ See Laws 2013, Chapter 178.

Several examples illustrate the ambiguities in the rule:

1. Regarding 6.12.7.8(A), it appears that the section applies only to policies and programs adopted and implemented by local school boards, which by definition do not include charter schools, either locally or state-chartered.⁸ Nor does the section appear to apply to programs implemented by public schools.
2. Local school boards are required to develop and implement cyberbullying prevention *policies*, to include certain elements, as mandated by Section 22-2-21. Public schools, including charter schools, are to implement cyberbullying prevention *programs*, but in the case of charter schools, it is unclear if their programs must include those required elements. This question is of particular relevance to state-chartered charter schools, which lack a district to look to for any administrative authority.
3. Local school boards must submit to PED assurances of their adoption and implementation of anti-bullying policies, their review and revision of disciplinary policy, and the implementation of training for their school employees. Again, it is unclear how this provision would apply to charter schools, particularly state-chartered charter schools; as it stands, the proposed rule seems to exempt charter schools from this requirement.
4. References in 6.12.7.8(D) do suggest that charter schools were contemplated as being required to comply with this subsection, such as the reference to the head administrator of a charter school in Subsection (D)(2); yet ambiguity remains because this subsection deals specifically with *policies*, and under Subsection (B), charter schools are not required to implement policies.

⁸ See Section 22-1-2(H), NMSA 1978: "local school board" means the policy-setting body of a school district..."

HED Notice of Public Hearing
5.7.20 NMAC, 4/15/14

ATTACHMENT 1

New Mexico Register / Volume XXV, Number 7 / April 15, 2014

NEW MEXICO HIGHER EDUCATION DEPARTMENT

The Higher Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Room 311 of the New Mexico State Capitol, 491 Old Santa Fe Trail Santa Fe, NM 87501 , on May 19 & 20, 2014, from 8:00 a.m. to 4:00 p.m. The purpose of the public hearing will be to obtain input on the following rule(s):

5.3.4 NMAC	Operating Budgets-Approval by Commission on Higher Education	(Rule Amendment)
5.3.5 NMAC	Operating Budgets-Funding Recommendations	(Rule Repeal and Replace)
5.3.7 NMAC	Building and Improvement Bonds	(Rule Amendment)
5.3.9 NMAC	Capital Budgets-Planning and Funding Recommendations	(Rule Amendment)
5.3.10 NMAC	Capital Projects Approval by Commission on Higher Education	(Rule Amendment)
5.3.12 NMAC	Instructional Funding	(Rule Amendment)
5.7.20 NMAC	Legislative Lottery Scholarship Program	(Rule Repeal and Replace)

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Mr. David Mathews, Office of General Counsel, Higher Education Department, 2048 Galisteo Street, Santa Fe, New Mexico 87505-2100 (david.mathews@state.nm.us) (505) 476-8402 (telefax (505) 476-8454).

Written comments must be received no later than 5:00 pm on May 5, 2014 (10 days prior to hearing). However, the submission of written comments as soon as possible is encouraged. Any rule may be removed from the agenda prior to the scheduled hearing.

The proposed rulemaking action may be accessed on the Department’s website (<http://hed.state.nm.us/>) or obtained from David Mathews, Office of General Counsel, Higher Education Department, 2048 Galisteo Street, Santa Fe, New Mexico 87505-2100 (david.mathews@state.nm.us) (505) 476-8402(telefax (505) 476-8454). The proposed rule will be made available at least thirty (30) days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact the Higher Education Department as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NOTICE OF PUBLIC HEARING REGARDING PROPOSED REPEAL AND REPLACEMENT OF RULES 6.50.1 NMAC THROUGH 6.50.18 NMAC IN ORDER TO UPDATE REGULATIONS IN ACCORDANCE WITH CHANGES IN STATUTORY LAW AND NEW MEXICO PUBLIC SCHOOL AUTHORITY POLICY CHANGES.

Notice is hereby given pursuant to amendments to Sections 22-29-7(E) and 22-29-7(F), NMSA 1978 (being Laws 1986, Chapter 94, Section 7 as amended) that the New Mexico Public School Insurance Authority plans to repeal and replace rules 6.50.1 NMAC through 6.50.18 NMAC in order to update the regulations in accordance with changes in statutory law and Authority policy changes.

The proposed new rules will be discussed and comments taken at a public hearing to be held May 1, 2014 at 9:00 a.m. at the New Mexico Public School Insurance Authority Board Meeting on Thursday, May 1, 2014 at 9:00 a.m. at the Cooperative Educational Services, 4216 Balloon Park Road, NE, Albuquerque, NM 87109. The Board Meeting will be called pursuant to Subsection H of 6.50.1.9 NMAC of the Board's Rules and Regulations and as provided by the current Open Meeting Act Resolution of the Authority. Copies of the proposed rules will be provided to all of the member school districts, charter schools and other educational entities and may be obtained before the meeting at the New Mexico Public School Insurance Authority's offices at 410 Old Taos Highway, Santa Fe, New Mexico or by contacting Frank R. Coppler (505) 988-5656 or by email to fcoppler@coppler.com.

Interested person may submit written comments to the New Mexico Public Schools Insurance Authority at 410 Old Taos Highway, Santa Fe, New Mexico 87501 or email comments to fcoppler@coppler.com to be received by 5:00 p.m. April 30, 2014. Written comments should suggest specific reasons for any suggested amendments or comments and include any proposed amendatory language.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the meeting, please contact the office of the Executive Director of the New Mexico Public Schools Insurance Authority at 1-800-548-3724 prior to the hearing, or as soon as possible. The proposed rules can be provided in various accessible formats. Please contact the office of the Executive Director of the New Mexico Public Schools Insurance Authority at 1-800-548-3724 if a summary or other type of accessible format is needed before April 25, 2014. If accommodation is not requested in advance, we cannot guarantee the availability of accommodation on-site.

This is an amendment to 6.10.8 NMAC, Section 8, effective May 15, 2014.

6.10.8.8 REQUIREMENTS:

- A. It is the policy of this state that school age persons receive an education and do not dropout or otherwise withdraw prematurely prior to completing an educational program. To that end, a school-age person shall attend public school, private school, home school or a state institution until the school-age person is at least eighteen years of age unless that person has graduated from high school or received a general educational development certificate. A parent may give written, signed permission for the school-age person to leave school in case of a documented hardship approved by the local superintendent.
- B. Each local school board and charter school shall develop a written attendance policy that:
- (1) in accordance with the definition of "attendance" stated in this rule, requires that class attendance be taken and maintained by class period for every instructional day for each student in each school or school program in the school district;
 - (2) provides excused absences for pregnant and parenting students as follows:
 - (a) provides at least ten days of excused absences for a student who provides documentation of the birth of the student's child and allows the student a time period to make up the work that the student missed that equals the number of days the student was absent for the birth of a child;
 - (b) provides excused absences for any additional days missed by a pregnant or parenting student for which a longer period of absence is deemed medically necessary by the student's physician and allows the student a time period to make up the work that the student missed that equals the number of days the student was absent;
 - (c) provides four days per semester of excused absences, in addition to the number of allowed absences for all students, for a student who provides appropriate documentation of pregnancy or that the student is the parent of a child under the age of thirteen needing care and allows the student a time period to make up the work that the student missed that equals the number of days the student was absent;
 - (d) clearly states that the pregnant or parenting student is responsible for communicating the student's pregnancy and parenting status to the appropriate school personnel if the student chooses to disclose the information; and
 - (e) provides that the school district or charter school shall provide a copy of the pregnant and parenting student absence policies to all students in middle, junior high and high schools; and
 - ~~(2)~~ (3) requires each school to report unexcused absences of two or more classes up to fifty percent of an instructional day as one-half day absence, and the unexcused absence of more than fifty percent of an instructional day to be counted as one full-day absence;
 - ~~(3)~~ (4) prohibits out-of-school suspension and expulsion as a punishment for unexcused absences and habitual truancy;
 - ~~(4)~~ (5) uses withdrawal as provided in Section 22-8-2 NMSA 1978 only after exhausting intervention efforts to keep students in educational settings;
 - ~~(5)~~ (6) provides for early identification of students with unexcused absences, students in need of early intervention, and habitual truants; provides for intervention strategies that focus on keeping students in need of early intervention in an educational setting; and further provides that:
 - (a) if a student is in need of early intervention, the school district or charter school shall contact the student's parent(s)/guardian(s) to inform them that the student has unexcused absences from school and to discuss possible interventions unless the parent(s)/guardian(s) has contacted the school to explain the absence and the excuse compiles with the school district attendance policy;
 - (b) a representative of the school district or charter school shall meet with the student in need of early intervention and his or her parent(s)/guardian(s) to identify the causes for the student's unexcused absences, identify what actions can be taken that might prevent the student's unexcused absences, identify possible school district, charter school and community resources to address the causes for the student's unexcused absences, and establish a corrective action plan to address the student's unexcused absences;
 - (c) the notification to the student's parent(s)/guardian(s) and the meeting with the parent(s)/ guardian(s) must be respectful and in a language and in manner that is understandable to the student and the parent(s)/guardian(s);
 - (d) the corrective action plan must contain follow-up procedures to ensure that the causes for the student's unexcused absences are being addressed;
 - (e) if the student is a habitual truant, the local school board, charter school or their authorized representatives shall, in addition, give written notice of the habitual truancy by mail to or by personal service on the student's parent(s)/guardian(s); the notice shall include a date, time and place for the parent to meet with the local school district or charter to develop intervention strategies that focus on keeping the student in an educational setting;
 - (f) if there is another unexcused absence after delivery of a written notice of habitual truancy, the student shall within seven (7) days of this unexcused absence be reported to the probation services office of the judicial district where the student resides;
 - (g) if the student is a habitual truant the school shall document the following for each student identified as a

SOURCE: NM Register

Adopted Rule, Compulsory School Attendance, 5/15/14

habitual truant:

- (i) attempts of the school to notify the parent that the student had unexcused absences;
- (ii) attempts of the school to meet with the parent to discuss intervention strategies; and
- (iii) intervention strategies implemented to support keeping the student in school.

C. If the habitual truant is not referred to the children's court by the juvenile probation office for appropriate disposition, including consideration of initial or renewed suspension of his or her driving privileges, the school district may contact the children's court attorney directly to determine what action will be taken.

D. If a determination and finding has been made by the juvenile probation office that the habitual truancy by a student may have been caused by the parent or guardian of the student, and no charges have been filed against the parent or guardian, the school district may contact the district attorney's office to determine what action will be taken.

E. A copy of the local school board or charter school's attendance policy shall be provided to the public education department's [~~truancy prevention coordinator~~] health education coordinator or designated staff for approval within ten (10) days of its adoption by the local school board or governing body of a charter school.

F. The public education department's truancy prevention coordinator shall be permitted access to any records and information related to students in need of early intervention or habitual truancy in any school district, any particular school within a district, or any charter school.

[6.10.8.8 NMAC - N, 12-30-04; A, 09-30-09; A, 05-15-14]

Adopted Rule,
School District Wellness Policy, 5/15/14

New Mexico Register / Volume XXV, Number 9 / May 15, 2014

ATTACHMENT 4

This is an amendment to 6.12.6 NMAC, Sections 7 and 8, effective May 15, 2014.

6.12.6.7 DEFINITIONS:

- A. "Coordinated school health approach" means the framework for linking health and education. The focus is healthy and successful students. There are eight interactive components of coordinated school health: health education; physical education and activity; nutrition; social and emotional well-being; healthy and safe environment; health services; staff wellness; and family, school and community involvement.
- B. "Family, school and community involvement" means an integrated family, school and community approach for enhancing the health and well-being of students by establishing a district school health advisory council that has the responsibility to make recommendations to the local school board in the development or revision, implementation, and evaluation of the wellness policy.
- C. "Health education" means the instructional program that provides the opportunity to motivate and assist all students to maintain and improve their health, prevent disease, and reduce health-related risk behaviors. It allows students to develop and demonstrate increasingly sophisticated health-related knowledge, attitudes, skills, and practices. It meets the content standards with benchmarks and performance standards as set forth in 6.30.2.19 NMAC.
- D. "Health services" means services provided for students to appraise, protect, and promote health. These services are designed to ensure access or referral to primary health care or behavioral health services or both, foster appropriate use of primary health care services, behavioral health services, prevent and control communicable diseases and other health problems, provide emergency care for illness or injury, promote and provide optimum sanitary conditions for a safe school facility and school environment, and provide educational and counseling opportunities for promoting and maintaining individual, family, and community health.
- E. "Healthy and safe environment" means the physical and aesthetic surroundings and the psychosocial climate and culture of the school. It supports a total learning experience that promotes personal growth, healthy interpersonal relationships, wellness, and freedom from discrimination and abuse.
- F. "Nutrition" means programs that provide access to a variety of nutritious and appealing meals and snacks that accommodate the health and nutrition needs of all students.
- G. "Physical activity" means body movement of any type which include recreational, fitness, and sport activities.
- H. "Physical education" means the instructional program that provides cognitive content and learning experiences in a variety of activity areas. It provides the opportunity for all students to learn and develop the skills, knowledge and attitudes necessary to personally decide to participate in a lifetime of healthful physical activity. It meets the content standards with benchmarks and performance standards as set forth in Section 6.30.2.20 NMAC.
- I. "Social and emotional wellbeing" means services provided to maintain and/or improve students' mental, emotional, behavioral, and social health.
- J. "Staff wellness" means opportunities for school staff to improve their health status through activities such as health assessments, health education and health-related fitness activities. These opportunities encourage school staff to pursue a healthy lifestyle that contributes to their improved health status, improved morale, and a greater personal commitment to the school's overall coordinated school health approach.
- K. [~~"Tactical emergency response plan" means that portion of a safe school plan that details risk assessments and establishes the plans or procedures to manage an emergency event after it has occurred and includes, but is not limited to, emergency routes and staff assignments as they relate to immediate actions, delayed actions, mitigation actions, facility evacuations and facility reentry]~~ "Emergency Operation Plan (EOP)" means the document which outlines and explains functions, resources and coordination procedures for responding to and supporting crisis, emergency, terrorist-response, and disaster operations, and is that portion of a safe school plan that details risk assessments and establishes the plans or procedures to manage a crisis, emergency, terrorist or disaster event before, during and after it has occurred and includes, but is not limited to, emergency routes and staff assignments as they relate to immediate actions, delayed actions, mitigation actions, facility evacuations and facility reentry.

[6.12.6.7 NMAC - N, 02-28-06; A, 11-30-06; A, 05-15-14]

6.12.6.8 REQUIREMENTS:

- A. This section applies to local school boards, local school districts, and charter schools and governs policies to be implemented by local school districts with regards to student and school employee wellness.
- B. Each school district and charter school shall develop and implement a policy that addresses student and school employee wellness through a coordinated school health approach.
- C. Each school district and charter school shall submit the wellness policy to the public education department for approval.

(1) Sections of the wellness policy that meet the requirements set forth in Paragraphs (3), (4), (5), (6) and (11) of Subsection D and the requirements set forth in Subsection E of this section shall be submitted to the public education department

SOURCE: NM Register

Adopted Rule,
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on or before August 30, 2006.

(2) Sections of the wellness policy that meet the requirements set forth in Paragraphs (1), (2), (7), (8), (9) and (10) of Subsection D of this section shall be submitted to the public education department on or before January 30, 2007.

D. The wellness policy shall include, but shall not be limited to:

(1) a planned, sequential, K-12 health education curriculum that addresses the physical, mental, emotional, and social dimensions of health and is aligned to the health education content standards with benchmarks and performance standards as set forth in 6.30.2.19 NMAC;

(2) a planned, sequential, K-12 physical education curriculum that provides the optimal opportunity for all students to learn and develop skills, knowledge and attitudes necessary to personally decide to participate in lifetime healthful physical activity and is aligned to the physical education content standards with benchmarks and performance standards as set forth in 6.30.2.20 NMAC;

(3) guidelines to provide physical activity opportunities to students before, during and/or after school;

(4) nutrition guidelines for a la carte offerings minimally meeting guidelines set forth in Subsection B of 6.12.5.8 NMAC;

(5) guidelines for school sponsored fund raisers during the normal school hours minimally meeting guidelines set forth in Paragraph (1) of Subsection C of 6.12.5.8 NMAC;

(6) guidelines for school sponsored fund raisers before and after schools hours ensuring that at least fifty percent of the offerings shall be healthy choices in accordance with the requirements set forth in Paragraph (2) of Subsection C of 6.12.5.8 NMAC;

(7) a plan addressing the behavioral health needs of all students in the educational process by focusing on students' social and emotional wellbeing;

(8) school safety plans at each school building focused on supporting healthy and safe ~~environments and including but not necessarily limited to:~~

~~(a) prevention,~~
~~(b) policies and procedures, and~~
~~(c) tactical emergency response plan;] learning environments; the school safety plan must be submitted to the public education department for approval on a three-year cycle and must include the following minimum components:~~

~~(a) introduction;~~

~~(b) school policies and procedures;~~

~~(c) prevention; and~~

~~(d) a school EOP;~~

(9) a plan addressing the health services needs of students in the educational process;

(10) a plan addressing the staff wellness needs of all school staff that minimally ensures an equitable work environment and meets the American with Disabilities Act, Part III;

(11) a plan for measuring implementation and evaluation of the wellness policy, including the designation of one or more persons within the school district, or at each school, as appropriate, charged with operational responsibility for ensuring that each school fulfills the district's wellness policy.

E. Family, school and community involvement. Each local board of education shall establish a district school health advisory council that consists of parent(s), school food authority personnel, school board member(s), school administrator(s), school staff; student(s); and community member(s). The school health advisory council shall have the responsibility to make recommendations to the local school board in the development or revision, implementation, and evaluation of the wellness policy consistent with this rule. The school health advisory council shall meet for this purpose a minimum of two times annually. [6.12.6.8 NMAC - N, 02-28-06; A, 11-30-06; A, 05-15-14]

This is an amendment to 6.12.7 NMAC, Sections 2, 3, 6, 7 and 8, effective May 15, 2014.

6.12.7.2 SCOPE: ~~[All public schools, including charter schools, and state supported educational institutions]~~ Local school boards and all public schools, including charter schools.
[6.12.7.2 NMAC - N, 11-30-06; A, 05-15-14]

6.12.7.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Sections 22-2-1, 22-2-21 and 9-24-8 NMSA 1978.
[6.12.7.3 NMAC - N, 11-30-06; A, 05-15-14]

6.12.7.6 OBJECTIVE: This rule establishes requirements for ~~[districts, schools and state supported educational institutions]~~ local school boards and public schools, including charter schools, to address bullying of students by adopting and implementing policies and prevention programs.
[6.12.7.6 NMAC - N, 11-30-06; A, 05-15-14]

6.12.7.7 DEFINITIONS:

A. "Bullying" means any repeated and pervasive written, verbal or electronic expression, physical act or gesture, or a pattern thereof, that is intended to cause distress upon one or more students in the school, on school grounds, in school vehicles, at a designated bus stop, or at school activities or sanctioned events. Bullying includes, but is not limited to, hazing, harassment, intimidation or menacing acts of a student which may, but need not be based on the student's race, color, sex, ethnicity, national origin, religion, disability, age or sexual orientation.

~~B.~~ "Cyberbullying" means electronic communication that:
(1) targets a specific student;
(2) is published with the intention that the communication be seen by or disclosed to the targeted student;

(3) is in fact seen by or disclosed to the targeted student; and
(4) creates or is certain to create a hostile environment on the school campus that is so severe or pervasive as to substantially interfere with the targeted student's educational benefits, opportunities or performance.

~~[B-]~~ C. "Department" means the public education department.

~~[C-]~~ D. "Harassment" means knowingly pursuing a pattern of conduct that is intended to annoy, alarm or terrorize another person.

~~[D-]~~ E. "IDEA" means the federal Individuals with Disabilities Education Act, 20 USC Secs. 1401 and following, including future amendments.

~~[E-]~~ F. "Local school board" means the governing body of a school district ~~[or charter school]~~.

~~[F-]~~ G. "Public school" means a school as defined by Section 22-1-2 NMSA 1978, including charter schools.

~~[F-]~~ "School district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes.]

[6.12.7.7 NMAC - N, 11-30-06; A, 05-15-14]

6.12.7.8 REQUIREMENTS:

A. This section ~~[applies to local school boards, local school districts, and charter schools and]~~ governs policies and programs to be adopted and implemented by local school ~~[districts with regards to]~~ boards addressing bullying and cyberbullying. Cyberbullying policies and programs must be in effect beginning with the 2013-2014 school year.

B. Each ~~[school district and charter school]~~ local school board shall develop and implement a policy that addresses bullying ~~[, no later than April 1, 2007]~~ and cyberbullying. Each local school board shall make any necessary revisions to its disciplinary policies to ensure that cyberbullying is addressed in accordance with the requirements of this rule.

C. ~~[Any such]~~ The anti-bullying policy shall at least include, but shall not be limited to:

- (1) definitions;
- (2) an absolute prohibition against bullying and cyberbullying;
- (3) a method to ensure initial and annual dissemination of the anti-bullying and anti-cyberbullying policy to all students, parents, teachers, administrators and all other school or district employees;

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- (4) procedures for reporting incidents of bullying and cyberbullying which ensure confidentiality to those reporting bullying or cyberbullying incidents and protection from reprisal, retaliation or false accusation against victims, witnesses or others with information regarding a bullying or cyberbullying incident;
- (5) consequences for bullying and cyberbullying which include consideration of compliance with state and federal IDEA requirements;
- (6) consequences for knowingly making false reports pursuant to the anti-bullying policy;
- (7) procedures for investigation by administration of incidents reported pursuant to the anti-bullying policy;
- (8) a requirement that teachers and other school staff report any incidents of bullying and cyberbullying; and
- (9) a requirement that anti-bullying is included as part of the health education curriculum as set forth in 6.30.2.19 NMAC (“content standards - health education”).

D. The cyberbullying prevention policy shall require that:

- (1) all licensed school employees complete training on how to recognize signs of cyberbullying;
- (2) any licensed school employee who has information about or a reasonable suspicion of cyberbullying shall report the matter immediately to either or both the school principal and the local superintendent or to the head administrator of a charter school;
- (3) any school administrator or local superintendent who receives a report of cyberbullying take immediate steps to ensure prompt investigation of the report; and
- (4) school administrators take prompt disciplinary action in response to cyberbullying confirmed through investigation; disciplinary action taken pursuant to this subsection must be by the least restrictive means necessary to address a hostile environment on the school campus resulting from the confirmed cyberbullying and may include counseling, mediation and appropriate disciplinary action that is consistent with the legal rights of the involved students.

E. Every public school shall implement a bullying and cyberbullying prevention program.

F. Every local school board shall submit to the department, as directed by the department, assurances of:

- (1) adoption and implementation of a policy addressing bullying and cyberbullying; and
- (2) review and, if necessary, revision of disciplinary policies to ensure that the policies address cyberbullying; and
- (3) implementation of cyberbullying training for all licensed school employees.

G. Every local school board and every charter school shall submit to the department, as directed by the department, assurances of implementation of bullying and cyberbullying prevention programs.

[6.12.7.8 NMAC - N, 11-30-06; A, 05-15-14]