

[EXT] 6.12.7 Safe & Health Schools Act Public Comment

Bonnie Murphy <bonnie@jesselewischooselove.org>

Fri 10/25/2019 2:37 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

 1 attachment

6.12.7-NMAC_Safe-Schools-Integrated_revised BMurphy.docx;

Dear Rule Making Committee,

Thank you so much for the opportunity to provide public commentary to the proposed rule for repeal and replacing the Bullying Prevention Act with the Safe & Healthy Schools Act rules for public schools regarding bullying. My feedback is attached and copied in this email below.

As a long-time educator and a community leader in the area of social and emotional learning as a viable and evidence-based tool to reduce bullying and the effects of bullying, our state's leadership is commendable for their obvious mission to improve NM's children's educational progress and achievements, which are inextricably connected to their overall well-being.

Thank you so much for the opportunity to be engaged in the discussion and decision-making, yet another area that this Public Education Administration is excelling in.

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 7 SAFE SCHOOLS FOR ALL STUDENTS

6.12.7.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
6.12.7.1 NMAC - Rp, 6.12.7.1 NMAC, 11/12/2019]

6.12.7.2 SCOPE: This rule applies to school districts, local school boards, and state- and district-chartered charter schools and governing bodies.
6.12.7.2 NMAC - Rp, 6.12.7.2 NMAC, 11/12/2019]

6.12.7.3 STATUTORY AUTHORITY: This rule is promulgated by the secretary of the department and the department under the authority of Sections 9-24-8 (says "he" instead of he/she, so needs to be changed), 22-2-1, 22-2-2, and 22-35-1 through 22-35-5 NMSA 1978.
6.12.7.3 NMAC - Rp, 6.12.7.3 NMAC, 11/12/2019]

6.12.7.4 DURATION: Permanent
6.12.7.4 NMAC - Rp, 6.12.7.4 NMAC, 11/12/2019]

6.12.7.5 EFFECTIVE DATE: November 12, 2019, unless a later date is cited at the end of a section.
6.12.7.5 NMAC - Rp, 6.12.7.5 NMAC, 11/12/2019]

6.12.7.6 OBJECTIVE: To establish requirements for local school boards and public schools, including charter schools and governing bodies, to develop and implement bullying prevention policies and programs and to report on the implementation of the Safe Schools for All Students Act per the parameters established within the provisions of this rule.
6.12.7.6 NMAC - Rp, 6.12.7.6 NMAC, 11/12/2019]

This rule is missing “who” and “how” there is a determination made of bullying. Who decides that this has actually occurred? What are the steps and criteria for this?

6.12.7.7 DEFINITIONS:

A. "Bullying" means any severe, pervasive, or persistent act or conduct that targets a student, whether physically, electronically, or verbally, and that:

(1) may be based on a student’s actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identify, spousal affiliation, physical or cognitive disability, or any other distinguishing characteristic; or an association with a person, or group with any person, with one or more of the actual or perceived distinguishing characteristics; and (if a person does not have any of these distinguishing characteristics, bullying should not be allowed to occur either)

(2) can be reasonably predicted to:

(a) place a student in reasonable fear of physical harm to the student’s person or property;

(b) cause a substantial detrimental effect on a student’s physical or mental health;

(c) substantially interfere with a student’s academic performance, attendance, or participation in extracurricular activities; or

(d) substantially interfere with a student’s ability to participate in or benefit from the services, activities, or privileges provided by a school or school-affiliated entity.

(the requirement for “substantial” should be struck out, as this gives permission for micro-aggressions that begin to mount and cause the beginnings of a “substantial” interference for the student, otherwise this allows for some level of bullying)

B. "Cyberbullying" means any bullying that takes place through electronic communication.

C. "Electronic communication" means a communication transmitted by means of an electronic device, including a telephone, cellular phone, computer, electronic tablet, pager or video or audio recording device.

D. "Gender identity" means a student’s self-perception, or perception by another, of the student’s identity as a male or female based upon the student’s appearance, behavior, or physical characteristics that are in accord with, or opposed to, the student’s physical anatomy, chromosomal sex, or sex at birth.

E. "Harassment" means a pattern of conduct that is intended to annoy, seriously alarm, or terrorize another person or group of people. (how can we judge someone’s intentions? This could be a pattern that “annoys, seriously alarms, or terrorizes another person or group of people for which the recipient has explicitly stated to the aggressor that the interaction should be stopped).

F. "Physical or cognitive disability" means a physical or cognitive impairment that substantially limits one or more or (of) a student’s major life activities.

G. "Progressive discipline" means disciplinary action other than suspension or expulsion from school that is designed to correct and address the basic causes of a student's specific misbehavior while retaining the student in class or in school, or restorative school practices to repair the harm done to relationships and other students from the student's misbehavior, and may include:

(1) meeting with the student and the student's parents;

(2) reflective activities, such as requiring the student to write an essay about the student's

misbehavior;

(3) counseling;

(4) anger management;

(5) health counseling or intervention;

(6) mental health counseling or intervention;

(7) participation in skill-building and conflict resolution activities;

(8) community service; and

(9) in-school detention or in-school suspension that is for a constructive purpose and may take

place during lunchtime, recess, after school, or during weekends. This is very difficult for students who NEED the expenditure of physical and possibly creative activity or oxygen or outside space or exposure to the sun’s rays in order to calm and center themselves for the next portion of their day, including those living in neighborhoods where parents do not allow their children to play outside for fear of their safety. Who will be expected to enforce this disciplinary practice? Teachers will need their planning, preparation, lunch, break, or other scheduled time and should not be required to enforce this. Perhaps something can be added in to delineate that a paid staff member who is designated at the school will be responsible for this enforcement.

H. "Regular volunteers" means those persons, including relatives of students, who commit to serve on a regular basis at a school district, charter school, or other educational entity without compensation.

I. "Sexual orientation" means heterosexuality, homosexuality, or bisexuality, whether actual or perceived. [6.12.7.7 NMAC - Rp, 6.12.7.7 NMAC, 11/12/2019]

6.12.7.8**BULLYING PREVENTION POLICIES - ADOPTION AND ENFORCEMENT:**

A. By January 1, 2020, each local school board or governing body shall adopt and enforce policies to:

- (1) prevent bullying and cyberbullying:
 - (a) on its property, including electronic communication on or with the use of its property;
 - (b) at school or district-sponsored events; and
 - (c) on any school-sponsored transportation; and
- (2) prohibit electronic communication directed at a student that is **considered bullying or harassment and is** published with the intent that it be seen by or disclosed to that student and that substantially interferes with the student's ability to participate in or benefit from the services, activities, or privileges provided by the public school.

harassment and is published with the intent that it be seen by or disclosed to that student and that substantially interferes with the student's ability to participate in or benefit from the services, activities, or privileges provided by the public school.

B. Each local school board and governing body shall control the content of its policy, provided that the policy includes:

- (1) the definitions as set forth in this rule;
- (2) a statement prohibiting bullying;
- (3) a statement prohibiting retaliation against persons who report or witness incidents of bullying;
- (4) a list of consequences, exclusive of suspension and expulsion, that can result from an incident of bullying, and with consequences that are designed to:

of bullying, and with consequences that are designed to:

- (a) appropriately correct the bullying behavior;
- (b) prevent another occurrence of bullying or retaliation;
- (c) protect the target of the bullying;
- (d) be flexible so that, in application, the consequences can vary in method and severity

based on:

- (i) the nature of the incident;
- (ii) the developmental age and/or cognitive level of the student who is **found to be** bullying; and
- (iii) historical problem behavior from the student who is **found to be** bullying;

and

(e) limit the restrictive nature of consequences for cyberbullying incidents, such that while correcting cyberbullying behavior and preventing further incidents of cyberbullying, a student **or adult (bullying of adults in schools can lead to secondary bullying of students) with found to be exercising** cyberbullying behavior is able to participate in or benefit from the services, activities, or privileges provided by the school to the greatest extent possible;

(5) a procedure for reporting bullying and for reporting retaliation for reporting an act of bullying, including:

- (a) an allowance for reporting orally and in the preferred language of the person reporting;
- (b) a method for anonymous reporting; provided that no formal disciplinary measures shall be taken solely on the basis of an anonymous report of an actual bullying incident; and
- (c) a method for parents to file written reports of suspected bullying; and

(6) a procedure for prompt investigation of reports of violations of the bullying prevention policy and of complaints of bullying or retaliation, including:

- (a) designation of a school or district administrator who has the responsibility to:
 - (i) investigate or supervise the investigation of all reports of bullying and
 - (ii) to ensure that investigations are completed promptly after the receipt of any

report made under this rule; **Who makes the determination of a bullying incident having taken place?**

(b) a procedure for notification of the parents of the student alleged to have committed an act of bullying and the parents of the student targeted by the alleged act; provided that if, in the administrator's professional opinion, notifying the parents would endanger the health or well-being of a student, the administrator may delay such notification as appropriate;

(c) a requirement that school employees who witness bullying or who receive reports of bullying notify the designated administrator within two calendar days of the employee witnessing or receiving a report of bullying;

(d) an appeal process for a student who is accused of bullying or who is the target of bullying and who is unsatisfied with the outcome of the initial investigation; and

(e) development of a ~~student~~ safety support plan for students who are targets of bullying that addresses safety measures the school will take to protect targeted students against further acts of bullying.

C. Each local school board and governing body shall include bullying prevention policies and procedures for reporting bullying in student (**, family and staff**) handbooks using developmentally and culturally appropriate language. Policies shall be produced and disseminated in appropriate languages in any school district in which a substantial portion of the student population speaks a language other than English at home.

D. Each public school shall document reports and investigations of bullying and shall maintain those records for no less than four years.

E. Each local school board or governing body shall establish procedures for public schools to report the number of bullying incidents and the number of harassment incidents, as defined by federal or state law, along with responses to these incidents, and shall report this information annually to the department at such time as determined by the department and through the department's student and teacher accountability reporting or through other means as determined by the department. (monthly student, parent and teacher reporting, irrespective of the school's reporting systems)
[6.12.7.8 NMAC - Rp, 6.12.7.8 NMAC, 11/12/2019]

6.12.7.9 BULLYING PREVENTION PROGRAMS - ESTABLISHMENT:

A. Following adoption of a bullying prevention policy, each public school shall:

(1) establish an annual bullying prevention program for students aligned with New Mexico's health education content standards with benchmarks and performance standards;

(2) provide annual training beginning with the 2020-2021 school year and each school year thereafter on bullying prevention to all school personnel and regular volunteers who have significant contact with students; and

(3) incorporate information on the bullying prevention policy into new employee training.

B. Each school district and public school shall develop a plan for the way in which the policy is to be publicized, including:

(1) making each school district's bullying prevention policy, and developmentally, culturally and linguistically appropriate variants of the policy, available on district and/or school public websites;

(2) identifying a point of contact for bullying-related concerns; and

(3) informing parents and students about the policy at least annually through student, family and staff handbooks and other resources.

[6.12.7.9 NMAC - N, 11/12/2019]

6.12.7.10 REPORTING REQUIREMENTS:

A. Beginning with the 2020-2021 school year, each school district and state- and district-chartered charter school shall annually submit the following to the department in a method prescribed by the department and in a timeframe determined by the department (definitely curious what this will be and how often, but hope that it includes student, teacher, parent and community input and not just school administration input or incomplete data collected and entered into the STARS program):

(1) a status report on the implementation of the provisions of this rule;

(2) data elements on the implementation of this rule including:

(a) the aggregate number of bullying incidents of students within the district or state-chartered charter school;

(b) the aggregate number of harassment incidents of students within the district or state-chartered charter school; and

(c) the corresponding responsive action or disposition taken by the district or state-chartered charter school, by type of action, for each bullying incident of a student and for each harassment incident of a student being bullied or harassed and for the student exercising bullying or harassment behavior in the incident.

(d) academic proficiencies of both the student being bullied or harassed and for the student(s) exercising bullying or harassing behavior in the incident in reading, math and science.

(e) SAT, IEP or 504 plan information for the students involved

(f) English language proficiencies for the students involved

(g) how many teachers those students have had come and go from their classrooms in the current and previous school year

(h) previous disciplinary actions taken with these students.

(i) qualifications, years of experience, and bully prevention training of their teachers in the current and previous school year

B. Each school district and state- and district-chartered charter school shall include, in its reporting, when known, a tabulation of the number of bullying incidents of students and the number of harassment incidents of students associated with each of the following actual or perceived distinguishing characteristic:

(1) race;

(2) color;

(3) national origin;

(4) ancestry;

(5) sex;

(6) sexual orientation;

- (7) gender identity;
- (8) spousal affiliation;
- (9) physical or cognitive disability; or
- (10) an association with a person, or group with any person, with one or more of the actual or perceived distinguishing characteristics.
- (11) when these distinguishing characteristics are missing and bullying or harassment is found to have taken place

[[6.12.7.10](#) NMAC - N, 11/12/2019]

HISTORY OF 6.12.7 NMAC: [RESERVED]

6.12.7 NMAC, Bullying Prevention, filed 11/30/2006, was repealed and replaced by 6.12.7 NMAC, Safe Schools for All Students, effective 11/12/2019.

Choosing Love,

Bonnie Lee Murphy -

[NM Choose Love Ambassador](#)

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(2) reflective activities, such as requiring the student to write an essay about the student's misbehavior;

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I. “Sexual orientation” means heterosexuality, homosexuality, or bisexuality, whether actual or perceived.

[6.12.7.7 NMAC - Rp, 6.12.7.7 NMAC, 11/12/2019]

6.12.7.8 BULLYING PREVENTION POLICIES - ADOPTION AND ENFORCEMENT:

A. By January 1, 2020, each local school board or governing body shall adopt and enforce policies to:
(1) prevent bullying and cyberbullying:
(a) on its property, including electronic communication on or with the use of its property;

(b) at school or district-sponsored events; and
(c) on any school-sponsored transportation; and
(2) prohibit electronic communication directed at a student that is considered bullying or harassment and is published with the intent that it be seen by or disclosed to that student and that substantially interferes with the student's ability to participate in or benefit from the services, activities, or privileges provided by the public school.

B. Each local school board and governing body shall control the content of its policy, provided that the policy includes:

(1) the definitions as set forth in this rule;
(2) a statement prohibiting bullying;
(3) a statement prohibiting retaliation against persons who report or witness incidents of bullying;

(4) a list of consequences, exclusive of suspension and expulsion, that can result from an incident of bullying, and with consequences that are designed to:

(a) appropriately correct the bullying behavior;
(b) prevent another occurrence of bullying or retaliation;
(c) protect the target of the bullying;

(d) be flexible so that, in application, the consequences can vary in method and severity based on:

- (i) the nature of the incident;
- (ii) the developmental age and/or cognitive level of the student who is found to be bullying; and
- (iii) historical problem behavior from the student who is found to be bullying; and

(e) limit the restrictive nature of consequences for cyberbullying incidents, such that while correcting cyberbullying behavior and preventing further incidents of cyberbullying, a student or adult (bullying of adults in schools can lead to secondary bullying of students) ~~with~~ found to be exercising cyberbullying behavior is able to participate in or benefit from the services, activities, or privileges provided by the school to the greatest extent possible;

(5) a procedure for reporting bullying and for reporting retaliation for reporting an act of bullying, including:

- (a) an allowance for reporting orally and in the preferred language of the person reporting;
- (b) a method for anonymous reporting; provided that no formal disciplinary measures shall be taken solely on the basis of an anonymous report of an actual bullying incident; and
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(6) a procedure for prompt investigation of reports of violations of the bullying prevention policy and of complaints of bullying or retaliation, including:

- (a) designation of a school or district administrator who has the responsibility to:
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- (b) a procedure for notification of the parents of the student alleged to have committed an act of bullying and the parents of the student targeted by the alleged act; provided that if, in the administrator's professional opinion, notifying the parents would endanger the health or well-being of a student, the administrator may delay such notification as appropriate;
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D. Each public school shall document reports and investigations of bullying and shall maintain those records for no less than four years.

E. Each local school board or governing body shall establish procedures for public schools to report the number of bullying incidents and the number of harassment incidents, as defined by federal or state law, along with responses to these incidents, and shall report this information annually to the department at such time as determined by the department and through the department's student **and** teacher accountability reporting or through other means as determined by the department. (**monthly student, parent and teacher reporting, irrespective of the school's reporting systems**)

[6.12.7.8 NMAC - Rp, 6.12.7.8 NMAC, 11/12/2019]

6.12.7.9 BULLYING PREVENTION PROGRAMS - ESTABLISHMENT:

A. Following adoption of a bullying prevention policy, each public school shall:

- (1) establish an annual bullying prevention program for students aligned with New Mexico's health education content standards with benchmarks and performance standards;

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DRAFT