

Safe Schools for All Students Act

Policy Framework for Compliance with NMAC 6.12.7

Background and Authority

Senate Bill 288, the Safe Schools for All Students Act, passed during the 2019 New Mexico Legislature and was signed by Governor Michelle Lujan Grisham on April 3, 2019. This legislation amended the Public School Code providing for the repeal of § 22-2-21 NMSA 1978 and creating § 22-35 NMSA, 1978 requiring the New Mexico Public Education Department to promulgate rules that require school districts to develop and implement bullying prevention policies and programs consistent with the Safe Schools for All Students Act.

The New Mexico Public Education Department (NMPED), through the rulemaking process, amended New Mexico Administrative Code (NMAC) 6.12.7 in response to this new law.

Since 2007 public schools have been required to implement bullying prevention programs and processes as defined in 6.12.7 NMAC: Bullying Prevention. The Safe Schools for All Students Act provides new definitions, new requirements for bullying prevention policies, new reporting and record retention requirements, and a requirement for annual training of students, school employees and volunteers.

The PED has developed the following policy framework in order to assist local school boards and governing bodies as they develop policies consistent with the Safe Schools for All Students Act.

The enclosed policy framework is for information purposes only and does not constitute legal advice. Local school boards and governing bodies may wish to consult with independent legal counsel as local policies and procedures are developed, adopted, and implemented.

Implementation Deadline

By January 1, 2020 each school board or governing body shall adopt bullying prevention policies that 1) prevent instances of bullying and cyberbullying on its property, at school or district sponsored events and on school sponsored transportation inclusive of electronic communication. 2) include definitions as set forth in the Act, 3) include a statement prohibiting bullying and a statement prohibiting retaliation against those who report or witness bullying, 4) include a list of consequences, exclusive of suspension or expulsion, designed to correct bullying behavior, prevent further occurrences, and protect the target of the bullying, 5) Set forth procedures for reporting bullying and for reporting instances of retaliation for reporting an act of bullying. Reports may be made orally, in the preferred language of the reporter, anonymously, and by parents in written form.

The content of the bullying prevention policies is at the discretion of the school board or governing council, except for the required policy features listed on the following pages.

The Following Sections are Policy Requirements

Bullying prevention policies must include statements prohibiting bullying and prohibiting retaliation against anyone who reports or witnesses bullying.

Reporting

Bullying prevention policies must include a procedure for reporting bullying and for reporting retaliation against reporting bullying. The reporting procedure must allow for anonymous reporting, for verbal reporting in whichever language the person reporting prefers, as well as for parents to file written reports of suspected bullying.

Bullying prevention policies must include a requirement for school employees who witness bullying, or who receive a report of bullying, to notify the designated administrator within two calendar days.

Investigations

Bullying prevention policies must include procedures for prompt investigation of reports of bullying, cyberbullying and retaliation. These procedures are 1) to be the responsibility of a school or district administrator who investigates or supervises investigation of all reports 2) include procedures for notification to parents/guardians of students alleged to have committed an act of bullying and the students targeted by the alleged act unless the administrator believes notification will endanger a student, 3) include an appeal process for both the student accused of bullying and the student who is the target of bullying should either be dissatisfied with the investigation outcome and 4) develop a student safety support plan to protect students from further acts of bullying.

Reports of bullying are to be documented and the documents maintained for at least four years.

Consequences

Bullying prevention policies must also include consequences for bullying and cyberbullying. Consequences must be designed to stop bullying and cyberbullying, should be developmentally appropriate, should be appropriate to the nature of the bullying, and should consider past behavior. Consequences for cyberbullying, while preventing further cyberbullying, must provide for the offending student to participate in and benefit from school to the greatest extent possible. The consequences for bullying cannot include suspension or expulsion. No consequences, or other formal disciplinary action, may be taken based solely on an anonymous report.

Bullying Prevention Policy Distribution

Using developmentally and culturally appropriate language, bullying prevention policies are to be included in student handbooks.

Definitions

A policy consistent with NMAC 6.12.7 must include the following definitions:

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

(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; and/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.

Cyberbullying means any bullying that takes place through electronic communication.

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.

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.

Harassment means a pattern of conduct that is intended to annoy, seriously alarm or terrorize another person or group of people and that serves no lawful purpose. The conduct must be such that it would cause an individual or group of people to suffer substantial emotional distress and/or place an individual or group of people in fear of their safety.

Physical or cognitive disability means a physical or cognitive impairment that substantially limits one or more or a student's major life activities.

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 and intervention;
- (7) participation in skill-building and conflict resolution activities;
- (8) community service; and
- (9) in-school detention or suspension, which is for a constructive purpose and which may take place during lunchtime, recess, after school or during weekends.

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.

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

Further information may be found at the NM PED Safe and Healthy Schools Bureau Bullying Prevention website:

<https://webnew.ped.state.nm.us/bureaus/safe-healthy-schools/bullying-prevention/>