

[EXT] Security: Armed at School Sites

Yolanda Archambeault <yarchambeault@sfps.k12.nm.us>

Thu 6/11/2020 1:17 PM

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

Cc:JAMIE, HOLLADAY <JHOLLADAY@sfps.k12.nm.us>;

Review Committee:

The following is my opinion and given of my free will.

Armed "authorize formerly certified and commissioned law enforcement officers employed by a school district " is a must at the middle school and high school area sites.

Not only for the protection of staff and students, however there is a distinct need for law enforcement to have a visual presence. How we learn to trust again takes extended hands, much like the programs of past "DARE".

The "DARE" programs' mission was to talk to students and help them understand the dangers of drugs. However, more importantly to establish a rapport with the community by respectfully engaging with faculty and students.

Over the past years, with the dissolvment of the practice to have law enforcement officers on campus, many districts (many states) have seen a rise in student disengagement (smoking, vaping, drinking, fighting, violent behaviors, and drug distribution).

This month we lost a student to a drug induced violent action. But there is more to this story. He came to our school as a freshman, taller with a gaining audience of impressionable peers. It was suspected he was distributing something. He was constantly out of the classroom, but suspected distribution could not be proved. Then after two years the student was briefly moved to a new school site, but he was back again. Finally three years later he was moved permanently. This student died of drug induced violence, he just turned 18.

If the presence of law enforcement at middle school could have mentored the 12 year old the chances of this early death may have been prevented. Now this is only one incident, but over the last 20 years how many early deaths could have been prevented. And not just drugs, but suicide and gang fights.

Sincerely,

--

Arch

Yolanda Archambeault

yarchambeault@sfps.k12.nm.us

Email Anytime

[467-1073](tel:467-1073) (*inactive*)

Capital High School, Room G220

Department of Mathematics

(Grade-10 Advisory Mentor)

****Disclaimer:** This message and any attachments are intended for the use of the addresses(s) only and may be confidential and/or legally privileged. If the reader is not the intended recipient, DO NOT READ, notify sender and delete this message. In addition, be aware that any disclosure, copying, distribution or use of the contents of this message is strictly prohibited. The contents of this message, while possibly falling under the exceptions of the Inspection of Public Records ACT [NMSA Chapter 14, Article2] may be subject to inspection by the public.

NMPED (NMAC, 6.12.12, Armed School Security Personnel)

Fons, August, DPS

Mon 7/6/2020 8:15 AM

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

Cc:Shea, Mark, DPS <Mark.Shea@state.nm.us>; Alzaharna, Kelly, DPS <Kelly.Alzaharna@state.nm.us>; Granito, Melanie, PED <Melanie.Granito2@state.nm.us>; Terrazas, Denise, PED <Denise.Terrazas@state.nm.us>;

To Whom It May Concern:

The New Mexico Department of Public Safety in conjunction with the New Mexico Law Enforcement Academy appreciate the opportunity to have participated in the discussions with the New Mexico Public Education Department regarding 6.12.12 New Mexico Administrative Code, Armed Public School Security Personnel. Collectively and in consensus, we [NMDPS and NMLEA] recommended that firearms carried by authorized Armed School Security Personnel specifically mean a handgun which has been officially adopted for use by a local law enforcement agency in the jurisdiction within which a school district or charter school is located.

Respectfully,

Dr. August M. Fons
Deputy Cabinet Secretary
New Mexico Department of Public Safety
(505) 827-3452 (Ofc.)
(505) 614-4102 (Cell)
August.Fons@state.nm.us

NM CORONAVIRUS HOTLINE:	1-855-600-3453
NEW MEXICO:	<u>CORONAVIRUS WEBSITE</u>

Confidentiality Notice: This e-mail, including all attachments is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited, unless specifically provided under the New Mexico Inspection of Public Records Act. If you are not the intended recipient, please contact the sender and destroy all copies of this message.

[EXT] Comments for 6.12.12 NMAC

Jesse Clifton <jclifton@drnm.org>

Fri 7/10/2020 3:50 PM

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

Cc:Heather Hoechst <hhoechst@nativesdisabilitylaw.org>; Don Priola <dpriola@drnm.org>; Jason Gordon <jgordon@drnm.org>;

 1 attachment

DRNM NADLComments 6.12.12 Final_7.10.2020.pdf;

Please see the attached pdf document with Disability Rights New Mexico and the Native American Disability Law Center's comments for proposed 6.12.12 NMAC. Please contact either of our offices if you have any questions or concerns.

Best,

Jesse D. Clifton
Attorney and Corinne Wolfe Fellow for Transformative Advocacy
Disability Rights New Mexico
3916 Juan Tabo Blvd. NE
Albuquerque NM 87111
(505) 256-3100



DISABILITY RIGHTS NEW MEXICO

3916 Juan Tabo Blvd., NE • Albuquerque, New Mexico 87111

TEL: (505) 256-3100 • FAX: (505) 256-3184

State-wide Toll Free 1-800-432-4682

WEBSITE: www.drn.org • EMAIL: info@drnm.org

Gary Housepian, Chief Executive Officer

Promoting and Protecting the Rights of Persons with Disabilities

July 10, 2020

Mr. John Sena
Policy Division
New Mexico Public Education Department
300 Don Gaspar Ave.
Room 121
Santa Fe, NM 87501

SUBMITTED VIA EMAIL AS PDF ATTACHMENT TO: Rule.Feedback@state.nm.us

RE: Proposed Rulemaking 6.12.12 NMAC

Dear Mr. Sena,

This letter is submitted on behalf of Disability Rights New Mexico (“DRNM”) and the Native American Disability Law Center (“Law Center”), the Protection and Advocacy (P&A) systems serving New Mexicans with disabilities. DRNM and the Law Center are members of the National Disability Rights Network (“NDRN”), which serves as the non-profit membership organization for all state and territory Protection & Advocacy Systems (“P&As”). P&As are federally-authorized non-profit organizations whose mission is to protect, promote, and expand the legal rights of individuals with disabilities. DRNM serves individuals with disabilities across the state, and the Law Center serves Native Americans with disabilities on the Navajo Nation and Four Corners region of our state. DRNM and the Law Center submit the following comments regarding the proposed introduction of new regulations on Armed Public School Security Personnel, which will be designated as 6.12.12 in the New Mexico Administrative Code (NMAC):

Negative Collateral Effects

Understanding that the promulgation of these regulations is required by statute, DRNM and the Law Center have concerns about the collateral effects of implementation without additional

clarification from the New Mexico Public Education Department (“NMPED”). We encourage NMPED to provide guidance or otherwise encourage school districts to limit the number of armed personnel being utilized on school campuses and interacting with students. Although school resource officers (SROs) and armed school security are distinguishable, there is nothing in this regulation that prohibits the simultaneous use of both positions on school campuses. If a SRO is on campus, the narrowly-stated objective to “mitigate loss of life during an emergency” is already being met; thus, there is no need for schools to add armed school security to accomplish this purpose. With the promulgation of this regulation, our organizations expect that at least some schools will utilize both armed school security and SROs. The effect of this regulation as written is simply more guns in schools, which exposes impressionable youth to firearms, promotes an overreliance on weapons for safety or authority, and creates an atmosphere of fear, more akin to a prison yard than a school yard.

The presence of armed school security officers will have consequences for students that outweighs the purported need to mitigate loss of life in emergency circumstances- a need that is already being met with the presence of SROs. From a practical standpoint, the presence of armed security guards could result in students being faced with an adult with a gun in the hallways, perhaps questioning them on why they do not have a hall pass or other minor student conduct. Recent events in our country demonstrate that many students, particularly students of color, are taught to fear law enforcement, especially when law enforcement is armed with a gun. The effect of armed security guards in schools will be increased authority, either perceived or exerted, in these individuals, relying on fear to manage student behavior as opposed to positive behavioral supports and services. Further, the presence of armed police officers in schools may increase rates of exclusionary school discipline, result in more referrals to juvenile justice and entry into the school to prison pipeline, and decrease graduation rates.¹

DRNM and the Law Center are concerned with the subsequent constitutional rights raised by the presence of armed security officers in schools. While the proposed regulation specifically prohibits armed security officers from arresting or detaining students, it is silent on whether these officers have the authority to search and question students. Without arrest and detention powers, armed security officers could conduct searches based solely on reasonable suspicion rather than a probable cause standard. Further, students may not discern the difference between a SRO and armed security officer and, intimidated by the presence of a firearm, inadvertently reveal self-incriminating information without receiving Miranda rights. NMPED must stop allowing our public education systems to resemble our criminal justice system. We recommend the promulgated rule specifically prohibit armed security guards from direct or indirect involvement in school discipline, questioning of students, or searches of students or their property.

All of this comes at a time when it is more likely for students in our state to have armed personnel on campus than adequate support providers such as school counselors, psychiatrists, or

¹ See e.g. Nance, Jason. (2016). Students, Police, and the School-To-Prison Pipeline. Washington University law quarterly. Washington University (Saint Louis, Mo.). School of Law. 93. 919; Weisburst, E.K. (2019), Patrolling Public Schools: The Impact of Funding for School Police on Student Discipline and Long-term Education Outcomes. J. Pol. Anal. Manage., 38: 338-365. doi:[10.1002/pam.22116](https://doi.org/10.1002/pam.22116)

social workers². The answers to New Mexico's struggles with establishing a system of public education that meets the unique needs of at-risk students, including students with disabilities and Native students, is certainly not to bring more guns or armed personnel on campuses. DRNM and the Law Center assert that New Mexico schools are not so innately dangerous as to require multiple armed staff and police to be present and routinely involved in the educational environment while necessary service positions remain vacant in districts across the state.

Insufficient Training for the Scope of Employment

DRNM and the Law Center are concerned that the training requirements of this regulation will not adequately prepare armed security officers for the unique environment of a public school. These regulations require that the armed security officer must have a minimum of 3 years' experience as a formerly commissioned law enforcement officer. Unlike teachers, social workers, school psychologists, or nearly any other profession that works with our state's students in school, law enforcement officers, past and present, are simply not trained to work with children and students in various stages of brain development. Not only is this type of training recommended for other school professionals, courses in child and adolescent psychology, sociology, and development are often required when a professional is being credentialed and licensed to work with students.

In the instance of an armed school security officer, who has not undergone previous training or professional development to work with students, 16 hours is insufficient to prepare them for duty in our public schools- an environment much different from that which a law enforcement officer typically patrols. The regulations suggest that a single-half day training (4 hours) is expected to provide the armed security officer with cultural competency and an understanding of prohibited profiling practices. In the wake of national attention on pervasive racism in law enforcement across the country and the killing of black individuals by white police officers, now is the time for NMPED to ensure that former law enforcement officers' implicit and explicit biases do not perpetuate these same cycles of racial discrimination and other racially motivated actions in our schools.

Conversely, under the proposed regulations, armed security officers are expected to be proficient and accurate in the use of their firearm, which will be addressed during 16 hours of firearms trainings and an annual (4 hour) training on firearm manipulation. While appropriate, these requirements illustrate the need for increased training in other areas. Proficient and accurate use of a firearm is surely a skill that former police officers were required to master; yet, these regulations suggest that armed school security guards will receive nearly as much time in firearm refresher training as they do in initial training to learn, absorb, and internalize new skills and demands that will impact the most vulnerable of our student populations- students with disabilities and students of color.

² See American Civil Liberties Union (ACLU). Race, Discipline, and Safety at U.S. Public Schools (2020). <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/race-discipline-and-safety-us-public-schools>

Research shows that students with disabilities and students of color already experience overrepresentation in out-of-school discipline and school referrals to law enforcement.³ Both groups experience closer observation, increased scrutiny, and are more readily referred to the office or have security called in response to student behavior.⁴ Despite this data, NMPED does not require annual training for working with students with disabilities and prohibited profiling practices, a daily requirement for most school security officers. This type of training is necessary to address the persistent overrepresentation of students with disabilities and students of color in school discipline and school-based referrals to juvenile justice. Such training requires regular self-assessment and accountability, which NMPED should encourage by requiring annual recertification training on cultural competence, prohibited profiling practices, and working with students with disabilities.

Conclusion

The promulgation of this rule leaves wide open the possibility for schools to bring MORE guns on campus and MORE non-academic, non-scholastic, non-therapeutic authority figures into a system intended to educate children, not scare them. Ostensibly, this rule is being promulgated in the name of safety, yet there is not conclusive data that supports the position that these measures actually increase school safety.⁵ On the contrary, marginalized students may actually feel less safe in such an environment.⁶ Security guards and SROs are already over-utilized in matters of school discipline and student behavior. Introducing former police officers as armed security guards in schools will further complicate students' positive attachment to school without meeting the actual social, emotional, or educational needs of students.

DRNM and the Law Center urge NMPED to consider limiting the role of armed security guards in schools and to increase training, particularly with respect to racial profiling and the needs of students with disabilities, before publishing this rule. While it is difficult to imagine the need for a school to require both armed security and SROs on campus to mitigate loss of life during an emergency, we understand the statutory requirement of promulgation of rules around armed security officers. We believe NMPED should share in our concerns regarding the implications of this proposed regulation on the constitutional rights of students, the normalization of guns in the educational environment, and the prisonization of our school yards. Students with disabilities and students of color are, statistically speaking, more likely to have security or law enforcement used in matters of student discipline at school than typically developed, white peers.⁷ To mitigate the potential negative impact of armed security guards in schools, NMPED should ensure these

³ U.S. Dep't of Education, 2015-2016 Data Collection: School Climate and Safety Data Highlights on School Climate and Safety in our Nation's Public Schools. www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf

⁴ U.S. Commission on Civil Rights, *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison-Pipeline for Students of Color with Disabilities*. July 2019, 5, 7; citing Sarah E. Redfield and Jason P. Nance, *School-to-Prison Pipeline*, American Bar Association, Joint Task Force on Reversing the School-to-Prison Pipeline, 2016, 7, <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1765&context=facultypub>.

⁵ *Supra*, note 4 at 46.

⁶ Theriot, Matthew T.; Orme, John G. "School Resource Officers and Students' Feelings of Safety at School." *Youth Violence and Juvenile Justice: An Interdisciplinary Journal*, vol. 14:2 (2014), 130-146.

⁷ *Supra*, note 4; citing generally e generally, U.S. Dep't of Education, Civil Rights Data Collection 2015-16, odds ratios calculated by USCCR staff.

guards are limited in their role within the schools and provided adequate and continuous education and training on topics to ensure all children are treated equally and kept safe.

Sincerely,



Jesse D. Clifton
Staff Attorney and Corinne Wolfe Fellow
Disability Rights New Mexico



Heather Hoechst
Staff Attorney
Native American Disability Law Center



DDPC Comments - 6.11.2 & 6.12.12 NMAC

McCoy, AliceLiu, DDPC

Fri 7/10/2020 4:50 PM

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

Cc:Stewart, Ryan, PED <Ryan.Stewart@state.nm.us>; Rodriguez, Stephanie, GOV <Stephanie.Rodriguez3@state.nm.us>; Padilla, Mariana, GOV <Mariana.Padilla@state.nm.us>; Sena, John, PED <John.Sena@state.nm.us>; jarango@nmia.com <jarango@nmia.com>; Katie Stone <katie@stone.com>;

 1 attachment

DDPC Comments - 6.11.2 & 6.12.12 NMAC.pdf;

NM PED Policy Division:

Attached please find DDPC's comments on the proposed rules 6.11.2 NMAC and 6.12.12 NMAC. Please do not hesitate to contact me with any questions regarding the comments.

Thank you,

Alice Liu McCoy
Executive Director



625 Silver Ave SW, Ste 100
Albuquerque, NM 87102
(505) 841-4575

625 Silver Avenue SW, Suite 100
Albuquerque, New Mexico 87102
Phone (505) 841-4519 Fax (505) 841-4590
www.nmddpc.com

Michelle Lujan Grisham, Governor
John B. Arango, Chair
Alice Liu McCoy, Executive Director

July 10, 2020

New Mexico Public Education Department
Policy Division
300 Don Gaspar Avenue
Santa Fe, NM 87501
Via electronic mail: rule.feedback@state.nm.us

RE: DDPC Comments on Proposed 6.11.2 NMAC & 6.12.12 NMAC

Dear NMPED Policy Division:

The New Mexico Developmental Disabilities Planning Council (DDPC) is a federally mandated state agency tasked with advocating for systemic change on behalf of New Mexicans living with developmental disabilities, from birth to end of life. Last fall, DDPC formed its Education Committee to problem solve the many issues school districts across the state continually face. The Education Committee specifically focuses on improving and reforming the education services provided to children living with disabilities and their families.

It is undisputable that the vast majority of children in the juvenile justice system live with a disability or multiple disabilities, including developmental and intellectual disabilities. Many of these children never receive special education services and instead are thrust into the juvenile justice system (and often, later, the criminal justice system). Once they have entered the juvenile justice system, it is extraordinarily difficult for children to recover and reclaim their education and their lives.

DDPC strives to combat the criminalization and traumatizing of children in schools by holding schools accountable for the actions taken against children who do not yet have the adequate tools to self-regulate consistently. To that end, DDPC submits the following comments for proposed rules 6.11.2 NMAC, Rights and Responsibilities of the Public Schools and Public School Students, and 6.12.12 NMAC, Armed Public School Security Personnel:

Determining and Reviewing Use of Restraint or Seclusion

PED's proposed rule change in 6.11.2.10(E) NMAC is a positive step in the rights direction; however, it does not go far enough to protect children from unwarranted use of restraint or seclusion (R/S).

Specifically, the proposed changes do not explicitly require schools to use the *least* restrictive intervention that mitigates the imminent danger of serious physical harm to the student or others. While the rule changes require training in de-escalation strategies, positive behavioral intervention supports, or other comparable behavior management techniques, the rule does not require that school personnel utilize these techniques prior to resorting to R/S. In a situation where these techniques are not required and used consistently, the student is far more likely to face a situation, whether or not it is a true emergency, in which school personnel may determine that any intervention short of R/S is insufficient.

The rule only provides behavioral assistance to the student if they are subject to R/S two or more times within 30 days. The 30-day time period is far too short. Under the rule, the child may experience as many as 3-4 R/S interventions per semester (or 6-8 per school year) without any support or assistance—an unacceptable number. The rule should provide, at a minimum, a time period of one semester.

Further, the rule allows two R/S interventions within 30 days before a student’s pre-existing IEP/BIP/support team is required to meet. If the student has a team, the school has already determined that the student has a disability that requires additional support. The team should be required to meet after every use of R/S to provide recommendations to avoid future R/S/ interventions.

Transparency of Restraint/Seclusion Reporting

DDPC commends the proposed rule additions in 6.11.2.10(E)(6) NMAC requiring notice and reporting of R/S incidents. DDPC urges the Department make the R/S data reported by schools readily available to the public, such as on the Sunshine Portal, removing any protected identifying information.

Disciplining Students with Disabilities

The proposed changes do not adequately address the particular problems students with disabilities face in disciplinary proceedings. DDPC has attached to this letter the Council Chair’s integrated comments on rule 6.11.2 NMAC that detail some of these problems. Ultimately, when students with disabilities face behavioral health challenges, they are typically approached and treated first as delinquents subject to disciplinary and criminal consequences. The rule itself demonstrates that consideration of students’ disabilities is an afterthought, if considered at all.

Yet, behavioral health research on children’s development provide tremendous amounts of evidence that a child’s behavioral health challenges are strong indicators that the child is grappling with their disabilities, whether diagnosed or undiagnosed. Instead of providing assistance to the child as the primary approach in dealing with behavioral challenges, schools default to discipline. The rule states clearly in 6.11.2.10(I) NMAC that students with disabilities “are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program.” The rule does not provide, however, adequate requirements to ensure students with disabilities receive appropriate support and assistance from schools to avoid drastic disciplinary measures as much as possible.

In another example demonstrating inadequate consideration of students' disabilities and the many challenges their families face, under the proposed rule, schools have the discretion to call law enforcement for any "criminal or delinquent act," which is broadly defined. If a student with a disability is immediately arrested after law enforcement is called and a subsequent manifestation determination deems the student's conduct a manifestation of their disability, the student and their family is then left to deal with the substantial fallout of the initial arrest—including court proceedings, legal fees, and any number of inappropriate, extraordinary burdens placed on the student and their family. The rule should explicitly state that when the school takes any action to notify law enforcement in response to a student's behavior, the school has the duty to remediate any harm resulting from the school's action when it is determined that the student's behavior is a manifestation of their disability.

Armed Law Enforcement in Schools

DDPC deeply understands the concerns schools have in protecting students and school staff from lethal harm. The continual presence of armed law enforcement in schools, however, will inevitably lead to increased criminalization of children's behaviors and the damaging growth of the school to jail pipeline.

It our responsibility to ensure students receive the services and supports to develop into contributing members of our communities. Behavioral challenges are often cries for help and indicators of underlying disabilities. The school's first response should be to support the student, not to punish them. The rules should reflect that priority.

DDPC appreciates the opportunity to provide comments on the above-mentioned rules. Please do not hesitate to contact us with any questions regarding our comments. We welcome further discussions with the Department on the issues we have raised.

Sincerely,

Alice Liu McCoy
Executive Director

John Arango
Council Chair

Enclosure

CC:
Secretary Ryan Stewart, PED
Stephanie Rodriguez, Office of the Governor
Mariana Padilla, Office of the Governor
Katie Stone, DDPC Vice Chair

Rule Comments
John Arango, DDPC Chair

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 11 PUBLIC SCHOOL ADMINISTRATION - STUDENT RIGHTS AND RESPONSIBILITIES
PART 2 RIGHTS AND RESPONSIBILITIES OF PUBLIC SCHOOLS AND PUBLIC
SCHOOL STUDENTS

6.11.2.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.11.2.1 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.2 SCOPE: This rule applies to public schools and public school students.
[6.11.2.2 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.3 STATUTORY AUTHORITY: This rule is being promulgated pursuant to Sections 22-2-1, 22-2-2, and 22-5-4.12 NMSA 1978 and 42 U.S.C. 11431 et seq., the McKinney-Vento Homelessness Assistance Act.
[6.11.2.3 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.4 DURATION: Permanent.
[6.11.2.4 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.5 EFFECTIVE DATE: July 28, 2020, unless a later date is cited at the end of a section.
[6.11.2.5 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.6 OBJECTIVE: To provide a comprehensive framework within which school districts, local school boards, locally chartered charter schools, state-chartered charter schools, and governing bodies of charter schools may carry out their educational mission and exercise their authority and responsibility to provide a safe environment for student learning and provide students and parents with an understanding of the basic rights and requirements necessary to effectively function in the educational community.
[6.11.2.6 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.7 DEFINITIONS:

A. "Administrative authority" means the school district superintendent, the head administrator of a state-chartered charter school, a principal, or their delegate to act officially in a matter involving school discipline or the maintenance of order. The term may include school security officers, but only to the extent of their authority as established under written local school board policies.

B. "Child with a disability" or "student with a disability" means a child who meets all requirements of 34 CFR Sec. 300.8 and:

(1) is age three through 21 or who will turn age three at any time during the school year;

(2) has been evaluated in accordance with 34 CFR Secs. 300.304 through 300.311 and any additional requirements of these or other department rules and standards as having one or more of the disabilities specified in 34 CFR Sec. 300.8, including an intellectual disability; a hearing impairment, including deafness, speech or language impairment; a visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairment; a specific learning disability; deaf-blindness; or being developmentally delayed as defined in Paragraph (4) of Subsection B of 6.31.2.7 NMAC; and who has not received a high school diploma; and

(3) at the discretion of each local educational agency and subject to the additional requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC, may include a child age three through nine who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.

C. "Criminal acts" means acts defined as criminal under federal and state law, and any applicable municipal or county criminal ordinances.

D. "Delinquent acts" means acts as defined in Subsection A of Section 32A-2-3 NMSA 1978, the Delinquency Act.

E. "**Detention**" means requiring a student to remain in a designated area in the student's school outside of instructional time, such as before school, during recess, during lunch, or after school. No detained student shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.

F. "**Disciplinarian**" means a person or group authorized to impose consequence(s) after the facts of a case have been determined by a hearing authority.

G. "**Disruptive conduct**" means willful conduct which:

(1) materially and in fact disrupts or interferes with the operation of a public school or the orderly conduct of any public school activity, including individual classes; or

(2) leads an administrative authority reasonably to forecast that such disruption or interference is likely to occur unless preventive action is taken.

H. "**Expulsion**" means the removal of a student from school either permanently or for an indefinite time exceeding 10 school days or a locally established shorter period.

I. "**Hearing authority**" means a person or group designated to hear evidence and determine the facts of a case at a required formal hearing.

J. "**Immediate removal**" means the removal of a student from school for one school day or less under emergency conditions and without a prior hearing.

K. "**In-school suspension**" means requiring a student to spend time in a designated area at the same school or in an environment where the student is allowed to continue with their academic learning.

L. "**Legal limits**" include the requirements of the federal and state constitutions and governing statutes, standards, and regulations, and also include the fundamental common-law requirement that rules of student conduct be reasonable exercises of the schools' authority in pursuance of legitimate educational and related functions. There are special limitations arising from constitutional guarantees of protected free speech and expression which shall be balanced against the schools need to foster an educational atmosphere free from undue disruptions to appropriate discipline.

M. "**Local school board**" includes the governing body of a charter school.

N. "**Local school district**" or "**school district**" includes a state-chartered charter school.

O. "**Long-term suspension**" means the removal of a student from school for a specified time exceeding either 10 school days or a locally established shorter period.

P. "**Mechanical restraint**" means the use of any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove, but "mechanical restraint" does not include mechanical supports or protective devices.

R. "**Parent**" means the natural parent, legal guardian, or other person having custody and control of a student who is subject to Section 22-12A-1 et seq. NMSA 1978, the Attendance for Success Act, or the student if the student is not subject to compulsory attendance.

S. "**Physical restraint**" means the use of physical force without the use of any device or material that restricts the free movement of all or a portion of a student's body, but "physical restraint" does not include physical escort.

T. "**Public school**" means the campus and any building, facility, vehicle, or other item of property owned, operated, controlled by or in the possession of a local school district. For purposes of student discipline, the term also includes any non-school premises being used for school-sponsored activities.

U. "**Refusal to cooperate with school personnel**" means a student's willful refusal to obey the lawful instructions or orders of school personnel whose responsibilities include supervision of students.

V. "**Refusal to identify self**" means a person's willful refusal, upon request from school personnel known or identified as such to the person, to identify themselves accurately.

W. "**Restraint**" when not otherwise modified means mechanical or physical restraint.

X. "**Review authority**" means a person or group authorized by the local school board to review a disciplinarian's final decision to impose a long-term suspension or expulsion.

Y. "**Seclusion**" means the involuntary confinement of a student alone in a room from which egress is prevented. "Seclusion" does not mean the use of a voluntary behavior management technique, including a timeout location, as part of a student's education plan, individual safety plan, behavioral plan or individualized education program that involves the student's separation from a larger group for purposes of calming.

Z. "**Sexual harassment,**" regarding students, means unwelcome or unwanted conduct of a sexual nature (verbal, non-verbal or physical) when:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of the advancement of a student in school programs or activities;

(2) submission to or rejection of such conduct by a student is used as the basis for decisions or opportunities affecting the student; or

(3) such conduct substantially interferes with a student's learning or creates an intimidating, hostile, or offensive learning environment.

AA. "School personnel" means all members of the staff, faculty, and administration employed by the local school board. The term includes school security officers, school bus drivers, and their aides, and also authorized agents of the schools, such as volunteers or chaperones, whose responsibilities include supervision of students.

BB. "Student" means a person who is enrolled in one or more classes at a public school.

CC. "Student experiencing homelessness" means children and youth as defined by Section 725(2) of the federal McKinney-Vento Homeless Assistance Act.

DD. "Superintendent of a school district" includes the head administrator of a state-chartered charter school.

EE. "Temporary suspension" means the removal of a student from school for a specified period of 10 or fewer school days after a rudimentary hearing.

FF. "Weapon," as set forth in Section 22-5-4.7 NMSA 1978, means:

(1) any firearm that is designed to, may readily be converted to, or will expel a projectile by the action of an explosion; and

(2) any destructive device that is an explosive or incendiary device, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter-ounce, mine or similar device.

[6.11.2.7 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.8 GENERAL PROVISIONS:

A. Jurisdiction over students. Public school authorities, which include all officials, employees and authorized agents of public schools, whose responsibilities include supervision of students shall have comprehensive authority within constitutional bounds to maintain order and discipline in school. In exercising this authority, such officials, employees, and authorized agents of public schools may exercise such powers of control, supervision, and correction over students as may be reasonably necessary to enable them to properly perform their duties and accomplish the purposes of education. This authority applies whenever students are lawfully subject to the schools' control, regardless of place. During such periods, public school authorities shall have the right to supervise and control the conduct of students, and students shall have the duty to submit to the schools' authority. The foregoing is intended to reflect the common law regarding the rights, duties, and liabilities of public school authorities in supervising, controlling and disciplining students. Nothing herein shall be construed as enlarging the liability of public school authorities beyond that imposed by statute, common law, or department rule.

B. School authority over non-students. In furtherance of the state's compelling interest in the orderly operation of public schools and school activities, school officials have the following forms of authority over non-students whose actions adversely affect school operations or activities.

(1) On school property: Local school boards may prohibit entry to and provide for the removal from any public school building or grounds any person who refuses to identify themselves and state a lawful purpose for entering. Any person who refuses to identify themselves may be removed by school authorities, who may use reasonable physical force to accomplish the removal. Alternately, a person who refuses to identify themselves and who refuses a lawful request to leave school premises may be subject to arrest by law enforcement officers for criminal offenses including but not limited to criminal trespass, interference with the educational process, or disorderly conduct. A person who identifies themselves and states a lawful purpose may nevertheless be subject to removal by school officials for engaging in activities prohibited by this rule. The person may also be subject to arrest by law enforcement officers if the person is committing any crime.

(2) Off school property: Public school authorities have indirect and limited authority over the activities of non-students off school property. To the extent that non-students' conduct at or near schools or school-sponsored activities may constitute a criminal offense, including the crimes of interference with the educational process, disorderly conduct or criminal trespass after refusing a lawful request to leave, school authorities may request law enforcement agencies to arrest the offenders.

C. Statement of policy. A primary responsibility of New Mexico public schools and their professional staff shall be to instill in students an appreciation of our representative form of government, the rights and responsibilities of the individual or group, and the legal processes whereby necessary changes are effected.

(1) The school is a community and the rules of a school are the laws of that community. All persons enjoying the rights of citizenship are subject to the laws of their community. Each right carries with it a corresponding obligation.

(2) The right to attend public school is not absolute. It is conditioned on each student's acceptance of the obligation to abide by the lawful rules of the school community until and unless the rules are changed through lawful processes.

(3) Teachers, administrators, and other school employees also have rights and duties. Teachers are required by law to maintain a suitable environment for learning in their classes and to assist in maintaining school order and discipline. Administrators are responsible for maintaining and facilitating the educational program by ensuring an orderly and safe environment in public schools. In discharging their duties, all school employees have the right to be free from intimidation or abuse and to have their lawful requests and instructions followed.

(4) Nothing in this rule shall be held to affect the due process rights of school employees or their use of any local school district grievance procedure. This rule does not address employment disputes.

D. Local school board authority: Local school boards have the authority and responsibility to ensure that suitable rules of student conduct and appropriate disciplinary processes are established within their school districts. Within legal limits as defined in Subsection L. of 6.11.2.7 NMAC, and subject to the minimums prescribed in this rule, local school boards have discretion to develop such rules, policies, and procedures as they deem appropriate to local conditions, including policies which afford students more protection than the minimums established here. Local school boards and administrative authorities which deem it appropriate may provide for student, community or appropriate state and local agency participation in the formulation and enforcement of school rules.

E. Severability. Any part of this rule found by adjudication before a competent tribunal to be contrary to law shall be stricken without effect to the remainder.
[6.11.2.8 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.9 RULES OF CONDUCT FOR NEW MEXICO PUBLIC SCHOOLS: The acts specified in Subsection A of 6.11.2.9 NMAC are prohibited in all public schools in New Mexico. Within legal limits as defined in Subsection L of 6.11.2.7 NMAC, local school boards have discretion to develop rules of conduct governing all others area of student and school activity.

A. Prohibited activities: The commission of or participation in the activities designated below is prohibited in all public schools and is prohibited for students whenever they are subject to school control. The following acts are prohibited by this rule:

(1) criminal or delinquent acts; **I understand the intent, but this is awfully broad language.**
(2) committing, threatening to commit, or inciting others to commit or threaten to commit any act of violence, directly or indirectly, in person or through electronic means, against a public school, student, or school personnel or official; **This is better and removes the implied obligation that, if the act is thought to be criminal, the police should be called.**

- (3) sexual harassment;
- (4) disruptive conduct;
- (5) refusal to identify self; and
- (6) refusal to cooperate with school personnel.

B. Regulated activities: Beyond those activities designated as prohibited in Subsection A of 6.11.2.9 NMAC, all other areas of student conduct may be regulated within legal limits by local school boards as they deem appropriate to local conditions. Conduct by non-students which affects school operations may be regulated within legal limits pursuant to any of the forms of authority described in Subsection B. of 6.11.2.8 NMAC. Activities subject to local school board regulation within legal limits include:

- (1) school attendance;
- (2) use of and access to public schools, including:
 - (a) restrictions on vehicular traffic on school property;
 - (b) prohibition of, or conditions on, the presence of non-school persons on school grounds or in school buildings while school is in session; and
 - (c) reasonable standards of conduct for all persons attending school-sponsored activities or other activities on school property;
- (3) students' dress and personal appearance;
- (4) use of controlled substances, alcohol and tobacco in public schools;

- (5) speech and assembly within public schools;
 - (6) publications distributed in public schools;
 - (7) the existence, scope, and conditions of availability of student privileges, including extracurricular activities and rules governing participation;
 - (8) per Section 22-5-4.7 NMSA 1978, each school district is required to adopt a policy providing for the expulsion from school, for a period of not less than one year, any student who is determined to have knowingly brought a weapon to a public school under the jurisdiction of the local school board. The local school board or the superintendent of the school district may modify the expulsion requirement on a case-by-case basis; the special rule provisions of Subsection D of 6.11.2.11 NMAC, apply to students with disabilities; and
 - (9) the discipline of students for out-of-school conduct having a direct and immediate effect on school discipline or the general safety and welfare of the school.
- [6.11.2.9 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.10 ENFORCING RULES OF CONDUCT:

A. Enforcing attendance requirements. Local school districts and public schools shall establish, maintain, and enforce attendance policies and requirements set forth in Section 22-12A-1 et seq. NMSA 1978, the Attendance for Success Act, and Section 32A-3A-1 et seq. NMSA 1978, the Family Services Act.

B. Search and seizure. School property assigned to a student and a student’s person or property while under the authority of a public school are subject to search, and items found are subject to seizure, in accordance with the following requirements:

- (1) Notice of search policy. Students shall be given reasonable notice, through distribution of written policies or otherwise, of each school's policy on searches at the beginning of each school year or upon admission for students entering during the school year.
- (2) Who may search. Certified school personnel, school security personnel and school bus drivers are “authorized persons” to conduct searches when a search is permissible as set forth in Subsection B of 6.11.2.10 NMAC. An authorized person who is conducting a search may request the assistance of one or more people, who upon consent become authorized to search for the purpose of that search only.
- (3) When a search is permissible. Unless local school board policy provides otherwise, an authorized person may conduct a search when the authorized person has a reasonable suspicion that a crime or other breach of disciplinary rules is occurring or has occurred. An administrative authority may direct or conduct a search under the same conditions and also when the administrative authority has reasonable cause to believe that a search is necessary to help maintain school discipline.
- (4) Conduct of searches and witnesses. The following requirements govern the conduct of permissible searches by authorized persons.
 - (a) School property, including lockers and school buses, may be searched with or without students present unless a local school board or administrative authority provides otherwise. When students are not present for locker searches, another authorized person shall serve as a witness whenever possible. Locks furnished by students should not be destroyed unless a student refuses to open one or circumstances otherwise render such action necessary in the judgment of the administrative authority.
 - (b) Student vehicles when on campus or otherwise under school control and students' personal effects, which are not within their immediate physical possession, may be searched in accordance with the requirements for locker searches in Subparagraph (a) of Paragraph (4) of Subsection B of 6.11.2.10 NMAC.
 - (c) Physical searches of a student’s person may be conducted only by an authorized person of the same sex as the student and, except when circumstances render it impossible, may be conducted only in the presence of another authorized person of the same sex. The extent of the search must be reasonably related to the infraction, and the search shall not be excessively intrusive in light of the student's age and sex, and the nature of the infraction.
- (5) Seizure of items. Illegal items, legal items which threaten the safety or security of others and items which are used to disrupt or interfere with the educational process may be seized by authorized persons. Seized items shall be released to appropriate authorities or a student's parent or returned to the student when and if the administrative authority deems appropriate.
- (6) Notification of law enforcement authorities. Unless a local school board policy provides otherwise, an administrative authority shall have discretion to notify the local children's court attorney, district attorney, or other law enforcement officers when a search discloses illegally possessed contraband material or evidence of some other crime or delinquent act. **Any limits on what the school board decides? Suppose that it**

decides that any violation should be referred to the police or district attorney for action? Even if the student is in special education?

C. Basis for disciplinary action. A student may appropriately be disciplined by administrative authorities in the following circumstances:

(1) for committing any act that endangers the health or safety of students, school personnel, or others for whose safety the public school is responsible, or for conduct that reasonably appears to threaten such dangers if not restrained, regardless of whether an established rule of conduct has been violated;

(2) for violating valid rules of student conduct established by the local school board or by an administrative authority to whom the local school board has delegated rulemaking authority, when the student knew or should have known of the rule in question or that the conduct was prohibited; or **Application of this standard to special education students with an intellectual disability is likely to be very problematic.**

(3) for committing acts prohibited by this rule, when the student knew or should have known that the conduct was prohibited.

D. Selection of disciplinary sanctions. Within legal limits as defined in Subsection L of 6.11.2.7 NMAC, local school boards have discretion to determine the appropriate sanction(s) to be imposed for violations of rules of student conduct or to authorize appropriate administrative authorities to make such determinations.

(1) School discipline and criminal charges. Appropriate disciplinary actions may be taken against students regardless of whether criminal charges are also filed in connection with an incident.

(2) Nondiscriminatory enforcement. Local school boards and administrative authorities shall not enforce school rules or impose disciplinary punishments in a manner which discriminates against any student on the basis of race, religion, color, national origin, ancestry, sex, or disability, except to the extent otherwise permitted or required by law or regulation. This statement shall not be construed as requiring identical treatment of students for violation of the same rule; it shall be read as prohibiting differential treatment which is based on race, religion, color, national origin, ancestry, sex, or disability rather than on other differences in individual cases or students.

E. Restraint or seclusion. In accordance with Section 22-5-4.12 NMSA 1978, each school shall establish requirements for the use of restraint and seclusion techniques.

(1) Schools shall establish policies and procedures, as approved by the local school board or governing body, for the use of restraint and seclusion techniques. Schools shall review such policies and procedures on a triennial basis, before submitting the school safety plan.

(a) A school may permit the use of restraint or seclusion techniques on any student only if the student's behavior presents an imminent danger of serious physical harm to the student or others and only if less restrictive interventions appear insufficient to mitigate the imminent danger of serious physical harm. Less restrictive interventions include de-escalation strategies, positive behavioral intervention supports, or other comparable behavior management techniques.

(b) The restraint or seclusion techniques shall be used only by school employees who are trained in the safe and effective use of restraint and seclusion techniques unless an emergency does not allow sufficient time to summon those trained school employees.

(c) The restraint or seclusion techniques shall not impede the student's ability to breathe or speak, shall be in proportion to a student's age and physical condition, and shall end when the student's behavior no longer presents an imminent danger of serious physical harm to the student or others.

(d) If a restraint or seclusion technique is used on a student, trained and authorized school employees shall maintain continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use.

(2) In accordance with Section 22-5-4.12 NMSA 1978, schools shall establish policies and procedures for the use of restraint and seclusion techniques in a school safety plan.

(a) A school safety plan, pursuant to requirements of Paragraph (7) of Subsection (D) of 6.12.6.8 NMAC, shall include the following minimum requirements:

(i) The school safety plan shall not be specific to any individual student; and

(ii) The school safety planning team shall include at least one administrator, one educator, and one special education expert and may include a counselor or social worker, nurse, and school resource officer or security staff. The school safety planning team shall include personnel who are trained as designated school personnel in restraint and seclusion.

(b) A school safety plan, pursuant to requirements of Paragraph (7) of Subsection (D) of 6.12.6.8 NMAC, shall be submitted to the department on a triennial basis, on a schedule determined by the

department. The department will provide local education agencies notice of a deadline to submit a school safety plan 90 days prior to the due date.

(3) Policies and procedures for the use of restraint and seclusion techniques shall require and describe appropriate training for designated school personnel.

(a) School districts and charter schools shall provide training for designated school personnel regarding de-escalation strategies, positive behavioral intervention supports, or other comparable behavior management techniques and the use of restraint or seclusion techniques. Designated school personnel shall attend training at least every two years or complete a certification course, exam, or other comparable demonstration of competency that provides evidence that the individual has up-to-date knowledge of proper restraint and seclusion techniques.

(b) In the event that new designated school personnel are identified within the school after the provision of the training, certification course, exam, or other comparable demonstration of competency, the school district or charter school shall ensure that a training or other competency demonstration is provided to new designated school personnel within 60 days of being designated.

(4) Policies regarding restraint or seclusion shall consider school district support and strategies for school employees to successfully reintegrate a student who has been restrained or secluded back into the school or classroom environment.

(5) Schools shall implement the following review procedures for incidents in which restraint or seclusion techniques are used.

(a) If a student has been restrained or secluded two or more times within 30 calendar days, the school shall review strategies used to address the student's behavior and determine whether the student needs a functional behavior assessment or referral to a student assistance team, behavioral intervention plan team, or, if a student has an individualized education program, a referral to the student's individualized education program team.

(b) If a student has been restrained or secluded two or more times within 30 calendar days, the student's individualized education program team, behavioral intervention plan team, or student assistance team shall meet within two weeks of each subsequent use to provide recommendations for avoiding future incidents requiring the use of restraint or seclusion.

(c) The review shall include whether school personnel involved in the incidents were trained in the use of de-escalation strategies, positive behavioral intervention supports, or restraint and seclusion techniques. Additionally, the review shall consider whether the individual who restrained or secluded a student needs additional training.

(d) To improve internal practices relative to incidents of restraint or seclusion, schools shall conduct an annual review and analysis of all incidents in which restraint or seclusion techniques were used, including the number of incidents, the type of incident, personnel involved, the need for additional training, and student demographics.

(6) Schools shall establish documentation and reporting procedures pursuant to the requirements listed in Section 22-5-4.12 NMSA 1978. In addition, schools shall provide written or oral assurance of secure storage and access to written documentation in accordance with this rule, 20 USC. Section 1232(g), 34 CFR Part 99, the Family Educational Rights and Privacy Act, and any other applicable federal or state laws or rules governing the privacy of such documents.

(a) A school employee shall provide the student's parent with written or oral notice on the same day the incident occurred, unless circumstances prevent same-day notification. If notice is not provided on the same day of the incident, notice shall be given within 24 hours after the incident.

(b) Within a reasonable time following the incident, no longer than two school days, a school employee shall provide the student's parent with written documentation that includes information about any persons, locations, or activities that may have triggered the behavior, if known, and specific information about the behavior and its precursors, the type of restraint or seclusion technique used, and the duration of its use. Such information, and other information determined by the department, shall be entered into the department's data collection and reporting system once the student's parent is notified and provided with written documentation.

(c) Schools shall report to the department, through the department's data collection and reporting system, the following information on a timeline and reporting frequency established by the department:

(i) the names, professional license numbers, and positions of school personnel trained in de-escalation strategies, positive behavioral intervention supports, or other comparable behavior management techniques, the date of the training, and the source of training;

(ii) all instances in which a restraint or seclusion technique is used;
(iii) all instances in which law enforcement is summoned instead of using a restraint or seclusion technique;
(iv) the names of the students and school personnel involved in an incident in which restraint or seclusion was used; and
(v) if a student was restrained, the type of restraint, including mechanical restraint or physical restraint, that was used.

(d) If a school summons law enforcement instead of using a restraint or seclusion technique on a student, the school shall comply with the reporting, documentation, and review procedures established pursuant to this rule and Section 22-5-4.12 NMSA 1978.

F. Corporal punishment. Corporal punishment shall be prohibited by each local school board pursuant to Subsection B of Section 22-5-4.3 NMSA 1978. Restraint or seclusion techniques used in compliance with Subsection E of 6.11.2.10 NMAC shall not be deemed to be corporal punishment.

G. Detention, suspension and expulsion. Where detention, suspension, or expulsion is determined to be the appropriate penalty, it may be imposed only in accordance with procedures that provide at least the minimum safeguards prescribed in 6.11.2.12 NMAC. Suspensions or expulsions of students with disabilities shall be subject to the further requirements of Subsection I of 6.11.2.10 NMAC and 6.11.2.11 NMAC.

H. Discipline of students experiencing homelessness. Removing students experiencing homelessness from school shall be used only as a last resort, pursuant to the requirements in 42 USC Sec. 11431 et seq., the McKinney-Vento Homelessness Assistance Act.

(1) Public schools shall develop discipline policies and procedures that are reviewed at least annually and align with local school board policies. Policies and procedures shall:

(a) through professional development activities, create an awareness among educators and administrators of the types of behaviors that students experiencing homelessness may exhibit due to homelessness and provide strategies and supports to address the behaviors through the student assistance team process in accordance with Subsection D of 6.29.1.9 NMAC;

(b) take into account the issues related to a student's homelessness by talking with the student and applicable staff and families prior to taking disciplinary action;

(c) consult with school behavior response teams or other applicable personnel to assign appropriate discipline related to the behavior;

(d) implement discipline alternatives to temporary or long-term suspensions or expulsions or classroom removals, if possible; and

(e) connect students with mental health services as needed.

(2) Public schools shall review school discipline records and data of students experiencing homelessness in order to identify any patterns in disciplinary actions that indicate an unfair bias against the students. The collection and review of such records shall be in compliance with the Family Educational Rights and Privacy Act, as well as any other applicable federal or state laws or rules governing the privacy of such documents.

I. Discipline of students with disabilities. Students with disabilities are not immune from school disciplinary processes, nor are they entitled to remain in a particular educational program when their behavior substantially impairs the education of other children in the program. However, public schools are required by state law and rule to meet the individual educational needs of students with disabilities to the extent that current educational expertise permits. Public school personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, consistent with the other requirements of 6.11.2.11 NMAC, is appropriate for a student with a disability who violates a code of conduct as provided in 34 CFR Sec. 300.530.

(1) Long-term suspensions or expulsions of students with disabilities shall be governed by the procedures set forth in 6.11.2.11 NMAC.

(2) Temporary suspensions of students with disabilities may be imposed in accordance with the normal procedures prescribed in Subsection D of 6.11.2.12 NMAC, provided that the student is returned to the same educational placement after the temporary suspension and unless a temporary suspension is prohibited under the provisions of Paragraph (3) of Subsection I of 6.11.2.10 NMAC.

(3) Program prescriptions. A student with a disability's individualized education program (IEP), under the Individuals with Disabilities Education Improvement Act (IDEA), need not affirmatively authorize disciplinary actions which are not otherwise in conflict with this rule. However, the IEP team may prescribe or prohibit specified disciplinary measures for an individual student with a disability by including appropriate provisions in the student's IEP. Administrative authorities shall adhere to any such provisions contained in a student

with a disability's IEP, except that an IEP team may not prohibit the initiation of proceedings for long-term suspension or expulsion which are conducted in accordance with this rule.

(4) Immediate removal. Immediate removal of students with disabilities may be done in accordance with the procedures of Subsection C of 6.11.2.12 NMAC.

(5) A student who has not been determined to be eligible for special education and related services under 6.31.2 NMAC and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this subsection if the conditions set forth in 34 CFR Sec. 300.534 have been met.

(6) Referral to and action by law enforcement and judicial authorities.

(a) Nothing in these rules of conduct prohibits an administrative authority from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

(b) Transmittal of records.

(i) An administrative authority reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted, for consideration by the appropriate authorities, to whom the administrative authority reports the crime.

(ii) An administrative authority reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

[6.11.2.10 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.11 DISCIPLINARY REMOVALS OF STUDENTS WITH DISABILITIES:

A. General. The following rules shall apply when a student with a disability under IDEA violates a rule of conduct as set forth in this rule which may result in:

(1) long-term suspension or expulsion; or

(2) any other disciplinary change of the student's current educational placement as specified in the federal regulations implementing IDEA at 34 CFR Secs. 300.530 through 300.536 and these or other department rules and standards.

B. Manifestation determination.

(1) For disciplinary removals of students with disabilities that exceed 10 consecutive school days or result in a disciplinary change of placement as defined by 34 CFR 300.536, the administrative authority must conduct a manifestation determination to determine whether the conduct was a manifestation of the child's disability pursuant to this Subsection. **I'd recommend requiring the manifestation determination for any violation that normally produces a suspension or expulsion. And/or the second and subsequent times a suspension of any length is proposed.**

(2) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a rule of student conduct, the administrative authority, the parent, and relevant members of the child's IEP team (as determined by the parent and the administrative authority) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(a) if the conduct in question was caused by or had a direct and substantial relationship to, the child's disability; or **It is therefore essential that the IEP list all potentially disruptive or criminal activities that could result from the disability so the issue of what behavior is related to the child's disability is settled before any violation can occur.**

(b) if the conduct in question was the direct result of the administrative authority's failure to implement the IEP. **Within 10 days is reasonable for setting up a meeting. But suppose that after the violation the police were called. At that point, the student is in the juvenile justice system. A determination that the violation had a relationship to the student's disability 10 days or more later is too late—the child and family have been penalized for something that resulted from the child's disability. There needs to be: 1) much more specific rules about who can call the police under what circumstances, and 2) the school must be required to take responsibility for extracting the child from the juvenile justice system if it is determined that the violation was related to the child's disability.**

(3) If the administrative authority, the parent, and relevant members of the child's IEP team determine the condition in either Subparagraph (a) or (b) of Paragraph (2) of Subsection B of 6.11.2.11 NMAC is met, the conduct must be determined to be a manifestation of the child's disability.

C. Determination that behavior is manifestation of disability. If the administrative authority, the parent, and relevant members of the IEP team determine the conduct was a manifestation of the child's disability, the IEP team must take immediate steps to comply with 34 CFR Sec. 300.530(f) and remedy any deficiencies. **This could be interpreted to mean that the authority must remedy any juvenile justice issues, but I'd make that responsibility explicit somewhere in this section.**

D. Determination that behavior is not a manifestation of disability. If the administrative authority, the parent, and relevant members of the IEP team determine the conduct was not a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to a child with a disability in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in Subsection I of this section. **How is the determination made? Suppose the parents and the IEP team decide the violation was a manifestation, but the administrative authority concludes it was not. What then?**

E. Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child's behavior involves one of the special circumstances listed in 34 CFR Sec. 300.530(g). For purposes of this subsection, the definitions provided in 34 CFR Sec. 300.530(i) shall apply. **Someone needs to look at the reference to see what violations permits a 9-week alternative education setting. Note that the term "alternative educational setting" is not defined.**

F. Determination of setting. The student's IEP team determines the interim alternative educational setting for services under Subsections C and D of this section. **The parent must participate in the determination.**

G. Change of placement because of disciplinary removals. For purposes of removals of a student with a disability from the child's current educational placement under 6.11.2.11 NMAC and 6.11.2.12 NMAC, a change of placement occurs if the conditions provided in 34 CFR Sec. 300.536 are met.

H. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the administrative authority must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR Sec. 300.504. **Notification of a decision once it is made is way too late. The parent must be involved in the manifestation determination. They also ought to be involved in the change of placement decision.**

I. Services. A student with a disability who is removed from the student's current placement pursuant to this section must continue to receive special education and related services as provided in 34 CFR Sec. 300.530(d).

J. Appeal.

(1) The parent of a student with a disability who disagrees with any decision regarding the placement or the manifestation determination under this section, or an administrative authority that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to Subsection I of 6.31.2.13 NMAC.

(2) A hearing officer who hears a matter under Paragraph (1) of Subsection J of 6.11.2.11 NMAC, has the authority provided in 34 CFR Sec. 300.532(b).

(3) When an appeal under this subsection has been made by the parent or the administrative authority, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in Subsections D or E of this section, whichever occurs first, unless the parent and the administrative authority agree otherwise.

[6.11.2.11 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

6.11.2.12 PROCEDURE FOR DETENTIONS, SUSPENSIONS, AND EXPULSIONS: The authority of the state and of local school boards to prescribe and enforce standards of conduct for public school students must be exercised consistently with constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violations of school rules. The right to a public education is a property right which may only be denied where school authorities have adhered to the minimum procedural safeguards required to afford the student due process of law. This section prescribes minimum requirements for detention, in-school suspension, and temporary, long-term or permanent removal of students from public schools. Local school boards may adopt procedures which afford students more protection than this rule requires. The procedures in this section apply only to disciplinary detentions, suspensions, and expulsions. They do not apply to disenrollment of students who fail to meet immunization, age, residence, or other requirements for valid enrollment, nor to the removal from school membership reports of students who have been absent from school for

10 consecutive school days in accordance with Subsection B of Section 22-8-2 NMSA 1978. Nothing in this section shall be construed as prohibiting school boards or administrative authorities from involving other school staff, students, and members of the community in the enforcement of rules of student conduct to the extent they believe is appropriate.

A. Post-suspension placement of students. Any student suspended from school shall be delivered directly by a school official to the student's parent(s) or an adult designated by the parent(s) or kept on school grounds until the usual end of the school day.

B. Students with disabilities. This section does not apply to long-term suspension or expulsion of students with disabilities pursuant to the IDEA or Section 504. The procedures for long-term suspension or expulsion of students with disabilities are set forth in Section 6.11.2.11 NMAC. School personnel under this section may remove a student with a disability who violates a rule of student conduct from the student's current placement to an appropriate interim alternative educational setting, another setting, or suspension, for no more than 10 consecutive school days to the extent those alternatives are applied to students without disabilities, and for additional removals of no more than 10 consecutive school days in the same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under Subsection G of 6.11.2.11 NMAC. **This may be in conflict with the above rule that allows placement in an alternative setting for 45 days.**

C. Immediate removal. Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with the educational process may be immediately removed from school, subject to the following rules:

(1) A rudimentary hearing, as required for temporary suspensions, shall follow as soon as possible; **"Rudimentary hearing" is not defined. May the student be represented? May the parent attend? Give testimony? What are the consequences of a rudimentary hearing that results in a suspension that is later determined to be incorrect?**

(2) Students shall be reinstated after no more than one school day unless within that time a temporary suspension is also imposed after the required rudimentary hearing. In such circumstances, a single hearing will support both the immediate removal and a temporary suspension imposed in connection with the same incident(s); and

(3) The school shall exert reasonable efforts to inform the student's parent of the charges against the student and the action taken as soon as practicable. If the school has not communicated with the parent by telephone or in person by the end of the school day following the immediate removal, the school shall on that day mail a written notice with the required information to the parent's address of record.

D. Temporary suspension.

(1) A local school board may limit temporary suspensions to periods shorter than 10 school days.

(2) A student facing temporary suspension shall be granted a rudimentary hearing in which the student shall first be informed of the charges against the student and, if the student denies them, shall be told what evidence supports the charge(s) and be given an opportunity to present the student's version of the facts. The following rules apply:

(a) the hearing may be an informal discussion and may follow immediately after the notice of the charges is given;

(b) unless the administrative authority decides a delay is essential to permit a fuller exploration of the facts, informal discussion may take place and a temporary suspension may be imposed within minutes after the alleged misconduct has occurred;

(c) a student who denies a charge of misconduct shall be told what act(s) the student is accused of committing, shall be given an explanation of the evidence supporting the accusation(s), and shall be given the opportunity to explain the student's version of the facts. The administrative authority is not required to divulge the identity of informants, although the administrative authority should not withhold such information without good cause. The administrative authority is required to disclose the substance of all evidence on which the administrative authority proposes to base a decision in the matter; **I get the point, but it clearly disadvantages a child who is not verbal or should be in special ed but is not. (70% of students in the juvenile center in Farmington were found eligible for special ed by experts diagnosticians but were not in special ed).**

(d) the administrative authority is not required to allow the student to secure counsel, to confront or cross-examine witnesses supporting the charge(s), or to call witnesses to verify the student's version of the incident, but none of these is prohibited; and **(But the administration can do all these things?)**

(e) the school shall exert reasonable efforts to inform the student's parent(s) of the charges against the student and the possible or actual consequence as soon as practicable. If the school has not

communicated with the parent(s) by telephone or in person by the end of the first full day of suspension, the school shall on that day mail a written notice with the required information to the parent's address of record.

E. In-school suspension. "Reasonable efforts" is not defined.

(1) In-school suspension may be imposed with or without further restriction of student privileges. Any student who is placed in in-school suspension which exceeds 10 school days must be provided with an instructional program that meets state and local educational requirements. Student privileges, however, may be restricted for longer than 10 school days. **They just sit there for 10 days?**

(2) In-school suspensions of any length shall be accomplished according to the procedures for a temporary suspension as set forth in Subsection D of 6.11.2.12 NMAC. A local school board may limit the length of in-school suspensions which may be accomplished under temporary suspension procedures. No student in in-school suspension shall be denied an opportunity to eat lunch or reasonable opportunities to go to the restroom.

F. Detention.

(1) Detention may be imposed in connection with in-school suspension, but is distinct from in-school suspension in that detention does not entail removing the student from any of the student's regular classes.

(2) The authority of the schools to supervise and control the conduct of students includes the authority to impose reasonable periods of detention during the day or outside normal school hours as a disciplinary measure. Reasonable periods of detention may be imposed in accordance with the procedures for temporary suspension.

G. Long-term suspension and expulsion.

(1) Each local school board shall authorize appropriate administrative authorities to initiate procedures leading to long-term suspension or expulsion. Where prompt action to suspend a student long-term is deemed appropriate, a temporary suspension may be imposed while the procedures for long-term suspension or expulsion are activated. However, where a decision following the required formal hearing is delayed beyond the end of the temporary suspension, the student shall be returned to school pending the final outcome unless the provisions of Subparagraphs (j) and (k) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC apply.

(2) A student who has been validly expelled or suspended is not entitled to receive any educational services from the local school district during the period of the exclusion from school. A local school board may provide alternative arrangements, including correspondence courses at the expense of the student or parent(s) pursuant to department requirements, if the local school board deems such arrangements appropriate.

(3) Each local school board shall establish, or shall authorize appropriate administrative authorities to establish, appropriate processes for handling long-term suspensions and expulsions. Unless the terms expressly indicate otherwise, nothing in Paragraph (4) of Subsection G of 6.11.2.12 NMAC shall be construed as directing that any required decision be made by any particular person or body or at any particular level of administrative organization.

(4) The following rules shall govern the imposition of long-term suspensions or expulsions:

(a) Hearing authority and disciplinarian. The same person or group may perform the functions of hearing authority and disciplinarian. Where the functions are divided, the hearing authority's determination of the facts shall be conclusive to the disciplinarian, but the disciplinarian may reject any consequence(s) recommended by the hearing authority.

(b) Review authority. Unless the local school board provides otherwise, a review authority shall have discretion to modify or overrule the disciplinarian's decision, but may not impose harsher consequences. A review authority shall be bound by a hearing authority's factual determinations except as provided in Subparagraph (o) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC.

(c) Disqualification. No person shall act as hearing authority, disciplinarian, or review authority in a case where the person was directly involved in or witnessed the incident(s) in question, or if the person has prejudged disputed facts or is biased for or against any person who will actively participate in the proceedings.

(d) Local school board participation. A local school board may act as hearing authority, disciplinarian, or review authority for any cases involving proposed long-term suspensions or expulsions. However, whenever a quorum of the local school board acts in any such capacity, Section 10-15-1 et seq., NMSA 1978, the Open Meetings Act, requires a public meeting.

(e) Initiation of procedures. An authorized administrative authority shall initiate procedures for long-term suspension or expulsion of a student by designating a hearing authority and disciplinarian in accordance with local school board policies, scheduling a formal hearing in consultation with the hearing authority, and preparing and serving a written notice meeting the requirements of Subparagraph (h) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC.

(f) Service of notice. The written notice shall be addressed to the student, through the student's parent(s), and shall be served upon the parent(s) personally or by mail.

(g) Timing of hearing. The hearing shall be scheduled no sooner than five nor later than 10 school days from the date of receipt of the notice by the parent(s). The hearing authority may grant or deny a request to delay the hearing in accordance with the provisions of Subparagraph (i) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC.

(h) Contents of notice. The written notice must contain all of the following information, parts of which may be covered by appropriate reference to copies of any policies or regulations furnished with the notice:

(i) the school rule(s) alleged to have been violated, a concise statement of the alleged act(s) of the student on which the charge(s) are based, and a statement of the possible penalty;

(ii) the date, time, and place of the hearing, and a statement that both the student and parent(s) are entitled and urged to be present;

(iii) a clear statement that the hearing will take place as scheduled unless the hearing authority grants a delay or the student and parent(s) agree to waive the hearing and comply voluntarily with the proposed disciplinary action or with a negotiated penalty, and a clear and conspicuous warning that a failure to appear will not delay the hearing and may lead to the imposition of the proposed penalty by default;

(iv) a statement that the student has the right to be represented at the hearing by legal counsel, a parent or some other representative designated in a written notice filed at least 72 hours before the hearing with the contact person named pursuant to Item (vi) of Subparagraph (h) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC;

(v) a description of the procedures governing the hearing;

(vi) the name, business address, and telephone number of a contact person through whom the student, parent(s), or designated representative may request a delay or seek further information, including access to any documentary evidence or exhibits which the school proposes to introduce at the hearing; and

(vii) any other information, materials or instructions deemed appropriate by the administrative authority who prepares the notice.

(i) Delay of hearing. The hearing authority shall have discretion to grant or deny a request by the student or the appropriate administrative authority to postpone the hearing. Such discretion may be limited or guided by local school board policies not otherwise inconsistent with this rule.

(j) Student status pending hearing. Where a student has been suspended temporarily and a formal hearing on long-term suspension or expulsion will not occur until after the temporary suspension has expired, the student shall be returned to school at the end of the temporary suspension unless:

(i) the provisions of Subparagraph (k) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC apply, or

(ii) the student and parent(s) have knowingly and voluntarily waived the student's right to return to school pending the outcome of the formal proceedings; or

(iii) the appropriate administrative authority has conducted an interim hearing pursuant to a written local school board policy made available to the student which affords further due process protection sufficient to support the student's continued exclusion pending the outcome of the formal procedures.

(k) Waiver of hearing, voluntary compliance, or negotiated penalty. A student and the student's parent(s) may elect to waive the formal hearing and review procedures and comply voluntarily with the proposed penalty, or may waive the hearing and review and negotiate a mutually acceptable penalty with the designated disciplinarian. Such a waiver and compliance agreement shall be made voluntarily, with knowledge of the rights being relinquished, and shall be evidenced by a written document signed by the student, the parent(s), and the appropriate school official.

(l) Procedure for hearing and decision. The formal hearing is not a trial. The formal hearing is an administrative hearing designed to ensure a calm and orderly determination by an impartial hearing authority of the facts of a case of alleged serious misconduct. Technical rules of evidence and procedure do not apply. The following rules govern the conduct of the hearing and the ultimate decision:

(i) The school shall have the burden of proof of misconduct.

(ii) The student and the student's parent(s) shall have the following rights: The right to be represented by legal counsel or other designated representative, however, the school is not required to provide representation; the right to present evidence, subject to reasonable requirements of substantiation at the discretion of the hearing authority and subject to exclusion of evidence deemed irrelevant or redundant; the right to

confront and cross-examine adverse witnesses, subject to reasonable limitation by the hearing authority; the right to have a decision based solely on the evidence presented at the hearing and the applicable legal rules, including the governing rules of student conduct.

(iii) The hearing authority shall determine whether the alleged act(s) of misconduct have been proved by a preponderance of the evidence presented at a hearing at which the student or a designated representative have appeared.

(iv) If no one has appeared on the student's behalf within a reasonable time after the announced time for the hearing, the hearing authority shall determine whether the student, through the parent(s), received notice of the hearing. If so, the hearing authority shall review the schools' evidence to determine whether it is sufficient to support the charge(s) of misconduct.

(v) A hearing authority who is also a disciplinarian shall impose an appropriate sanction if the hearing authority finds that the allegations of misconduct have been proved under the standards of either Item (iii) or (iv) of Subparagraph (1) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC. A hearing authority who is not a disciplinarian shall report the findings, together with any recommended sanction, to the disciplinarian promptly after the hearing.

(vi) Arrangements to make a tape recording or keep minutes of the proceedings shall be made by the administrative authority who scheduled the hearing and prepared the written notice. A verbatim written transcript is not required, but any minutes or other written record shall fairly reflect the substance of the evidence presented.

(vii) The hearing authority may announce a decision on the question of whether the allegation(s) of misconduct have been proved at the close of the hearing. A hearing authority who is also a disciplinarian may also impose a penalty at the close of the hearing.

(viii) In any event, the hearing authority shall prepare and mail or deliver to the student, through the parent(s), a written decision within five working days after the hearing. The decision shall include a concise summary of the evidence upon which the hearing authority based its factual determinations. A hearing authority who is also a disciplinarian shall include in the report a statement of the penalty, if any, to be imposed, and shall state reasons for the chosen penalty. A hearing authority who is not a disciplinarian shall forward a copy of the hearing authority's written decision to the disciplinarian forthwith. The disciplinarian shall prepare a written decision, including reasons for choosing any penalty imposed, and mail or deliver it to the student, through the parent(s), within five working days of receipt of the hearing authority's report.

(ix) A disciplinarian who is not a hearing authority may observe but not participate in the proceedings at a formal hearing. If the disciplinarian is present at the formal hearing and if the hearing authority announces a decision at the close of the hearing, the disciplinarian may also announce the disciplinarian's decision at that time.

(x) The disciplinarian's decision shall take effect immediately upon initial notification to the parent(s), either at the close of the hearing or upon receipt of the written decision. If initial notification is by mail, the parent(s) shall be presumed to have received the notice on the fifth calendar day after the date of mailing unless a receipt for certified mail, if used, indicates a different date of receipt.

(m) Effect of decision. If the hearing authority decides that no allegation(s) of misconduct have been proved, or if the disciplinarian declines to impose a penalty despite a finding that an act or acts of misconduct have been proved, the matter shall be closed. If the disciplinarian imposes any sanction on the student, the decision shall take effect immediately upon notification to the parent and shall continue in force during any subsequent review.

(n) Right of review. Unless the local school board was the disciplinarian, a student aggrieved by a disciplinarian's decision after a formal hearing shall have the right to have the decision reviewed if the penalty imposed was at least as severe as a long-term suspension or expulsion, an in-school suspension exceeding one school semester, or a denial or restriction of student privileges for one semester or longer. A local school board may grant a right of review for less severe penalties. Local school boards shall establish appropriate mechanisms for review except where the local board was the disciplinarian, in which case the local school board decision is final and not reviewable administratively. A student request for review must be submitted to the review authority within 10 school days after the student is informed of the disciplinarian's decision.

(o) Conduct of review. Unless the local school board provides otherwise, a review authority shall have discretion to modify the disciplinarian's decision, including imposing any lesser sanction deemed appropriate. A review authority shall be bound by the hearing authority's factual determinations unless the student persuades the review authority that a finding of fact was arbitrary, capricious, or unsupported by substantial evidence or that new evidence, which has come to light since the hearing and which could not with reasonable

diligence have been discovered in time for the hearing, would manifestly change the factual determination. Upon any such finding, the review authority shall have discretion to receive new evidence, reconsider evidence introduced at the hearing, or conduct a de novo hearing. In the absence of any such finding, the review shall be limited to an inquiry into the appropriateness of the penalty imposed.

(p) Form of review. Unless the local school board provides otherwise, a review authority shall have discretion to conduct a review on the written record of the hearing and decision in the case, to limit new submissions by the aggrieved student and school authorities to written materials, or to grant a conference or hearing at which the student and the student's representative and school authorities may present their respective views in person. Where a conference or hearing is granted, the record-keeping requirements of Item (vi) of Subparagraph (l) of Paragraph (4) of Subsection G of 6.11.2.12 NMAC apply.

(q) Timing of review. Except in extraordinary circumstances, a review shall be concluded no later than 15 working days after a student's written request for review is received by the appropriate administrative authority.

(r) Decision. A review authority may announce a decision at the close of any conference or hearing held on review. In any event, the review authority shall prepare a written decision, including concise reasons, and mail or deliver it to the disciplinarian, the hearing authority and the student, through the parent(s), within 10 working days after the review is concluded.

(s) Effect of decision. Unless the local school board provides otherwise, a review authority's decision shall be the final administrative action to which a student is entitled.
[6.11.2.12 NMAC – Rp, 6.11.2.7 NMAC, 7/28/2020]

HISTORY OF 6.11.2 NMAC:

6.11.2 NMAC, Rights and Responsibilities of the Public Schools and Public School Students, filed 8/15/1997, was repealed and replaced by 6.11.2 NMAC, Rights and Responsibilities of Public Schools and Public School Students, effective 7/28/2020.