**~~TITLE 6 PRIMARY AND SECONDARY EDUCATION~~**

**~~CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS~~**

**~~PART 6 SUSPENSION OF AUTHORITY OF A LOCAL SCHOOL BOARD, SUPERINTENDENT~~**

 **~~OR PRINCIPAL~~**

**~~6.30.6.1 ISSUING AGENCY:~~** ~~Public Education Department.~~

~~[6.30.6.1 NMAC - N, 10/17/2005]~~

**~~6.30.6.2 SCOPE:~~** ~~All local school boards, superintendents, principals and their counterparts in charter schools.~~

~~[6.30.6.2 NMAC - N, 10/17/2005]~~

**~~6.30.6.3 STATUTORY AUTHORITY:~~** ~~Sections 22-2-1, Subsection C of 22-2-2, 22-2-14 and 9-24-8 NMSA 1978.~~

~~[6.30.6.3 NMAC - N, 10/17/2005]~~

**~~6.30.6.4 DURATION:~~** ~~Permanent.~~

~~[6.30.6.4 NMAC - N, 10/17/2005]~~

**~~6.30.6.5 EFFECTIVE DATE:~~** ~~October 17, 2005, unless a later date is cited at the end of a section.~~

~~[6.30.6.5 NMAC - N, 10/17/2005]~~

**~~6.30.6.6 OBJECTIVE:~~** ~~This rule establishes the process for suspending the authority of local school boards, superintendents, principals, and their counterparts in charter schools failing to attain and maintain the requirements of law, standards, or rules of the public education department.~~

~~[6.30.6.6 NMAC - N, 10/17/2005]~~

**~~6.30.6.7 DEFINITIONS:~~**

**~~A.~~** ~~“charter school” means a conversion school or start-up school within a school district authorized by the local school board to operate as a charter school;~~

**~~B.~~** ~~“public school” means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes a charter school; and~~

**~~C.~~** ~~“school district” means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes.~~

~~[6.30.6.7 NMAC - N, 10/17/2005]~~

**~~6.30.6.8 FACTORS IN DETERMINING SUSPENSION BY THE SECRETARY:~~**

~~A.~~~~Suspending the authority of local school boards, superintendents, principals, and their counterparts in charter schools is warranted whenever there has been a failure to meet requirements of law, standards or rules of the public education department as to any part of the school district or charter school under their respective control. Whether or not to commence the suspension process under this rule shall be at the discretion of the secretary who will make this determination on a case by case basis. Generally:~~

**~~(1)~~** ~~money budgeted by a school district shall be spent first to attain and maintain the requirements for a school district as prescribed by law and by standards and rules as prescribed by the department; and~~

 **~~(2)~~** ~~money budgeted by or provided to a charter school counterpart shall be spent first to attain and maintain the requirements for a charter school as prescribed by state or federal law and by standards and rules as prescribed by the department; and~~

**~~(3)~~** ~~the department may disapprove instructional units or administrative functions that it determines to be detrimental to the educational process.~~

 **~~B.~~** ~~The secretary, after consultation with the commission, may suspend from authority and responsibility a local school board, local superintendent, school principal, or their counterparts in charter schools that has had notice of disapproval and fails to comply with the requirements or procedures of Subsection B of 6.30.6.9 NMAC. If suspension is ordered, the department shall act in lieu of the suspended local school board, local superintendent, school principal or their counterparts in charter schools until the secretary removes the suspension.~~

**~~C.~~** ~~To determine a failure to meet the requirements of law, department standards, or department rules, the secretary shall consider the following factors:~~

 **~~(1)~~** ~~the existence of a pattern of noncompliance with requirements of any applicable law, department standards, state or federal rules or department directives;~~

 **~~(2)~~** ~~the nature and severity of any identified area or areas of noncompliance with requirements of any applicable law, department standards, state or federal rules or department directives;~~

 **~~(3)~~** ~~the nature and type of notice given by the department to the applicable local school board, superintendent, principal, and their charter school counterparts, regarding the area or areas of noncompliance with requirements of law, department standards, or department directives;~~

 **~~(4)~~** ~~the opportunity to correct the area or areas of noncompliance, if correction is possible under the circumstances;~~

 **~~(5)~~** ~~the extent of any efforts to correct the area or areas of noncompliance; and~~

**~~(6)~~** ~~the reasons given by the local school board, superintendent, principal, or charter school counterparts for failing to comply with Subsection B of Section 22-2-14 NMSA 1978 or with other requirements of law, department standards, and department directives, leading to the proposed suspension.~~

**~~D.~~** ~~If suspension is ordered, the department shall act in lieu of the suspended local school board, local school superintendent, school principal, or their counterparts if the school is a charter school. The department shall execute all the legal authority of the local school board, the superintendent, school principal, or their charter school counterparts. The secretary may delegate authority to act in lieu of the suspended local school board, local school superintendent, school principal, or their counterparts in a charter school, provided that there shall be no contract with a private entity for the management of a public school, school district, or charter school.~~

~~[6.30.6.8 NMAC - N, 10/17/2005]~~

**~~6.30.6.9 PROCEDURES FOR SUSPENSION OF AUTHORITY:~~**

**~~A.~~** ~~When suspension is contemplated, the department shall deliver written notification to a local school board or charter school counterpart of any failure to meet requirements of laws, rules or standards. The notice shall describe the requirements of laws, rules or standards that have not been followed.~~

**~~B.~~** ~~Within 30 calendar days after the receipt of the notice of failure to meet requirements, the local school board, charter school governing authority, or specifically affected administrator, shall:~~

 **~~(1)~~** ~~comply with the specific and attendant requirements in order to remove the cause for disapproval; or~~

 **~~(2)~~** ~~submit plans satisfactory to the department to meet the requirements and remove the cause for disapproval.~~

**~~C.~~** ~~At any time prior to the entry of a permanent order of suspension, the secretary shall consult with the public education commission at a public meeting to discuss the reasons for and purpose of the proposed suspension. The commission may recommend other alternatives to suspension, which the secretary may consider in rendering a final decision in the process.~~

**~~D.~~** ~~If after 30 calendar days from receipt of a notice of failure to meet requirements, the school authority or official has failed or refused to comply with the specific and attendant requirements set forth in the notice, including submitting a satisfactory plan of compliance to the department, an alternative order of suspension that states the cause(s) for the suspension, the effective date and time the suspension will begin, any other information deemed relevant by the secretary shall be issued. The alternative order of suspension shall be delivered to the local school board or charter school governing body.~~

**~~E.~~** ~~The alternative order shall also contain notice of a time, date and place for a public hearing, prior to the beginning of suspension, to be conducted by the secretary, at which the local school board, a local school superintendent, a local school principal, or their charter school counterparts, may appear and show cause why the suspension should not be put into effect.~~

 **~~(1)~~** ~~The hearing shall be held within 60 calendar days of the date the alternative order is issued.~~

 **~~(2)~~** ~~The school authority or official subject to the alternative order may be represented by counsel.~~

 **~~(3)~~** ~~The school authority or official subject to the alternative order shall, within 30 calendar days of the date the order is issued, submit to the secretary a written statement with supporting documentation stating why the secretary should not impose a suspension. The written statement shall address only the cause(s) for suspension specified in the alternative order and the reasons for opposing the suspension, which shall address the factors outlined in Subsection C of 6.30.6.8 NMAC. Three copies of the written statement with supporting documentation shall be submitted to the department’s general counsel.~~

**~~(4)~~** ~~The secretary may designate department staff to review all information resulting in the alternative order and all information submitted by the school authority or official subject to the alternative order for the purpose of preparing and submitting to the secretary a report recommending that the suspension proceed or not proceed and the reasons for that recommendation. The report shall contain, as appropriate, legal authority for the department staff’s recommendation. The report shall be delivered to the secretary no later than seven business days before the scheduled hearing, with a copy provided to the school authority or official subject to the alternative order or counsel, if any.~~

 **~~(5)~~** ~~The secretary may have the department’s legal counsel present at the hearing and may seek that counsel’s advice before, during, and after the hearing.~~

**~~(6)~~** ~~The secretary may designate a person as a point of contact for receiving documents and addressing procedural issues. However, except for brief inquiries about scheduling, logistics, procedure or similar questions that do not affect the merits of the case, the school authority or official subject to the alternative order shall not communicate with or encourage others to communicate with the secretary or any staff member of the department about the case prior to the hearing.~~

**~~(7)~~** ~~The hearing shall be presided over by the secretary or a hearing officer designated by the secretary and shall be opened to the public. A hearing officer shall, within two business days after the hearing, or sooner as requested by the secretary, submit to the secretary a report setting forth findings of fact.~~

 **~~(8)~~** ~~An official transcript of proceedings shall be made, which may be in the form of an audio recording. Either party may have a copy of the transcript at their expense.~~

**~~(9)~~** ~~The secretary shall open the hearing and start with opening statements, first by the department staff and then from the school authority or official subject to the alternative order. Unless extended by the secretary, the oral arguments shall be no longer than twenty minutes each and may not raise any issues that have not been brought forth in the alternative order, the written statement of the school authority or official subject to the alternative order, or the department’s written recommendation.~~

 **~~(10)~~** ~~The secretary may question the school authority or official subject to the alternative order and/or department staff regarding the causes for the alternative order and the reasons stated by the recipient for opposing the suspension.~~

**~~(11)~~** ~~The department and the school authority or official subject to the alternative order may put forth witnesses to address the secretary only on the causes stated in the alternative order and the reasons stated by the recipient of the alternative order for opposing the suspension. Witnesses shall be sworn. The witnesses may testify only if they have personal knowledge of the facts leading to the causes stated in the alternative order of suspension through professional assignments.~~

 **~~(12)~~** ~~No later than five business days before the hearing the department staff and the school authority or official subject to the alternative order shall file with the secretary a list of witnesses and a detailed description of the testimony that each witness will provide. The department staff and recipient will provide each other copies of the witness list.~~

 **~~(13)~~** ~~The department’s witnesses shall first be presented to the secretary, after which the school authority or official subject to the alternative order may present witnesses. The secretary may establish parameters for the testimony of witnesses and may exclude any testimony that is repetitive or not relevant to the causes leading to the alternative order of suspension or the reasons set forth by the recipient for opposing the suspension. The department and the school authority or official subject to the alternative order shall have the right to cross-examine witnesses.~~

 **~~(14)~~** ~~The rules of evidence and rules of civil procedure shall not apply to the hearing. Prehearing matters including motions may be filed by mail or facsimile.~~

 **~~(15)~~** ~~Unless extended by the secretary, the department and the school authority or official subject to the alternative order of suspension, shall each have no more than 10 minutes to present closing arguments, after which the secretary shall close the hearing.~~

 **~~(16)~~** ~~The secretary shall make permanent, modify, or withdraw the alternative order within five business days after the hearing date. The secretary’s decision shall be in writing and delivered to the school authority or official subject to the alternative order, the public education commission, and applicable department staff.~~

 **~~(17)~~** ~~The secretary’s written decision shall contain findings, reasons, conclusions, and legal authority to make permanent, modify, or withdraw the alternative order. The decision shall also address the requirements for removing the suspension and timelines for completing all requirements for removing the suspension.~~

 **~~(18)~~** ~~The secretary’s decision to modify an alternative order shall also include the specific administrative and school functions for which the department shall be responsible until the suspension is lifted.~~

 **~~(19)~~** ~~The school authority or official subject to the alternative order of suspension may waive the timelines provided in this rule so long as such waiver is in writing and signed by a person with authority.~~

 **~~(20)~~** ~~The matter may be settled by the parties at any time prior to the conclusion of the show cause hearing. Any such agreement shall address the timelines provided in this rule.~~

**~~F.~~** ~~In addition to the above-stated procedures the secretary may suspend a local school board, local superintendent, school principal, or its charter school counterpart when the local school board, local superintendent, school principal, or its charter school counterpart has been notified in writing of disapproval status and when the department has sufficient reason to believe that the educational process in the school district or public school has been severely impaired or halted as a result of deficiencies so severe as to warrant disapproved status before a public hearing can be held. A public hearing shall still be held as soon as practicable on the matter following the procedures established in this rule and after notice is provided to the school authority or official subject to the suspension. However, the department shall immediately take control of the local school board, local superintendent or school principal, or its charter school counterpart upon issuing written notice of its intent to impose a suspension on the basis that the educational process has been severely impaired or halted as a result of deficiencies so severe as to warrant disapproved status before a public hearing can be held.~~

**~~G.~~** ~~The school authority or official subject to the suspension who is aggrieved by the secretary’s decision may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.~~

**~~H.~~** ~~No suspension shall be used to bring about a consolidation or reorganization of a school district without the approval of the local board of that district.~~

~~[6.30.6.9 NMAC - N, 10/17/2005]~~

**~~6.30.6.10 DURATION OF SUSPENSION:~~** ~~Suspension of a local school board, school superintendent, school principal, or its charter school counterpart shall continue until requirements of law, standards or rules have been met, compliance is assured, and the secretary removes the suspension. Nothing in this rule shall in any way limit the term of office, membership, election, re-election or recall of a local school board or charter school governing body.~~

~~[6.30.6.10 NMAC - N, 10/17/2005]~~

**~~6.30.6.11 IMPLEMENTATION:~~**

**~~A.~~** ~~The secretary may use any or all of the following groups or individuals in executing its legal authority over a suspended local school board, local superintendent, school principal, or their charter school counterparts:~~

**~~(1)~~** ~~the department;~~

**~~(2)~~** ~~contracted consultants;~~

 **~~(3)~~** ~~contracted management other than with private entities (e.g., another school district, state educational institution, regional educational cooperatives, including contracts for the services of individuals regularly employed by such entities).~~

**~~(4)~~** ~~any combination of the foregoing.~~

**~~B.~~** ~~While it shall not be the express purpose of a suspension under this rule to terminate, discharge, or replace licensed or unlicensed district or charter school employees, the secretary shall possess and execute all the legal authority and responsibility of the suspended local school board, charter school governing body, or designated administrator subject to the following restrictions:~~

**~~(1)~~** ~~The retention of existing district administrators and employees shall be considered.~~

 **~~(2)~~** ~~Any termination or discharge of district employees must be conducted in accordance with the applicable sections of the School Personnel Act [NMSA 1978, Section 22-10A-1 et seq.].~~

 **~~(3)~~** ~~Any adverse personnel action of any licensed or unlicensed district employee shall be limited to the authority set forth in the suspended district's policies.~~

 **~~(4)~~** ~~The secretary shall not be obligated to honor any district employment plans or letters of intent issued pursuant to NMSA 1978, Section 22-10A-14 (2003) that involve the hiring of an individual holding or seeking a certificate of waiver.~~

~~[6.30.6.11 NMAC - N, 10/17/2005]~~

**~~6.30.6.12 PERIODIC STATUS REPORT:~~** ~~The secretary shall advise the public education commission of all suspensions in effect at each commission meeting. Additionally, the secretary shall advise the commission when a suspension is terminated at the next meeting after which the suspension was terminated.~~

~~[6.30.6.12 NMAC - N, 10/17/2005]~~

**~~6.30.6.13 SEVERABILITY:~~** ~~If any part or application of this rule is held invalid by a court of competent jurisdiction, the remainder or its application to other situations shall not be affected.~~

~~[6.30.6.13 NMAC - N, 10/17/2005]~~

**~~HISTORY OF 6.30.6 NMAC: [RESERVED]~~**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION**

**CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS**

**PART 6 SUSPENSION OF AUTHORITY OF A LOCAL SCHOOL BOARD**

**6.30.6.1 ISSUING AGENCY:** Public Education Department, hereinafter the department.

[6.30.6.1 NMAC - Rp. 6.30.6.1 NMAC, 12/14/2021]

**6.30.6.2 SCOPE:** This rule shall apply to all local school boards.

[6.30.6.2 NMAC - Rp. 6.30.6.2 NMAC, 12/14/2021]

**6.30.6.3 STATUTORY AUTHORITY:** Sections 9-24-8, 22-2-1, 22-2-2, and 22-2-14 NMSA 1978.

[6.30.6.3 NMAC - Rp. 6.30.6.3 NMAC, 12/14/2021]

**6.30.6.4 DURATION:** Permanent.

[6.30.6.4 NMAC - Rp. 6.30.6.4 NMAC, 12/14/2021]

**6.30.6.5 EFFECTIVE DATE:** December 14, 2021, unless a later date is cited at the end of a section.

[6.30.6.5 NMAC - Rp. 6.30.6.5 NMAC, 12/14/2021]

**6.30.6.6 OBJECTIVE:** This rule establishes the process for suspending the authority of local school boards for failing to attain and maintain the requirements of law, standards, or rules of the department.

[6.30.6.6 NMAC - Rp. 6.30.6.6 NMAC, 12/14/2021]

**6.30.6.7 DEFINITIONS:**

 **A. “Emergency suspension”** means a suspension imposed by the secretary when there is sufficient

reason to believe the educational process in the school district or public school has been severely impaired or halted as a result of severe deficiencies.

 **B.** **“Public school”** means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings or remotely administered program generally recognized as either an elementary, middle, junior high, or high school or any combination of those and includes a charter school; and

 **C.** **“School district”** means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes.

[6.30.6.7 NMAC - Rp. 6.30.6.7 NMAC, 12/14/2021]

**6.30.6.8 FACTORS IN DETERMINING SUSPENSION BY THE SECRETARY:**

 **A.** Suspending the authority of local school boards is warranted whenever there has been a failure to meet requirements of law, standards, or rules of the department, relating to any part of the school district under their respective control. Whether or not to commence the suspension process under this rule shall be at the discretion of the secretary who will make this determination on a case by case basis.

 **B.** The secretary, after consultation with the commission, shall suspend from authority and responsibility a local school board that has had notice of disapproval and fails to comply with the requirements or procedures of Subsection B of 6.30.6.9 NMAC.

 **C.** To determine a failure to meet the requirements of law, department standards, or department rules, the secretary may ~~shall~~ consider the following factors, including but not limited to:

 **(1)** the existence of a pattern of noncompliance with requirements of any applicable law, department standards, state or federal rules, or department directives;

 **(2)** the nature and severity of any identified area or areas of noncompliance with requirements of any applicable law, department standards, state or federal rules, or department directives;

 **(3)** the nature and type of notice given by the department to the applicable local school board regarding the area or areas of noncompliance with requirements of law, department standards, or department directives;

 **(4)** the opportunity to correct the area or areas of noncompliance, if correction is possible under the circumstances;

 **(5)** the extent of any efforts to correct the area or areas of noncompliance; and

 **(6)** the reasons given by the local school board for failing to comply with Subsection B of Section 22-2-14 NMSA 1978 or with other requirements of law, department standards, and department directives, leading to the proposed suspension.

 **D.** If suspension is ordered, the department shall act in lieu of the suspended local school board, provided that any expenses or payments associated with the authority delegated by the secretary to act in lieu of the suspended local school board shall be the responsibility of the local school board as part of its operational funds.

 **E.** Money budgeted by a local school board shall be spent first to attain and maintain the requirements for a school district as prescribed by law and by standards and rules as prescribed by the department. The department may disapprove instructional units or administrative functions that it determines to be detrimental to the educational process.

[6.30.6.8 NMAC - Rp. 6.30.6.8 NMAC, 12/14/2021]

**6.30.6.9 PROCEDURES FOR NON-EMERGENCY SUSPENSION:**

 **A.** Before suspending a local school board, the department shall deliver written notification to a local school board of its failure to meet requirements of laws, rules, or standards. The notice shall describe the deficiency or deficiencies.

 **B.** Within 30 calendar days after the receipt of the notice of failure to meet requirements, the local school board shall:

 **(1)** comply with the specific and attendant requirements in order to remove the cause for disapproval; or

 **(2)** submit plans satisfactory to the department to meet the requirements and remove the cause for disapproval.

 **C.** At any time prior to the entry of a permanent order of suspension, the secretary shall consult with the public education commission at a public meeting to discuss the reasons for and purpose of the proposed suspension. The commission may recommend other alternatives to suspension, which the secretary may consider in rendering a final decision in the process.

 **D.** If after 30 calendar days from receipt of a notice of failure to meet requirements, the local school board has failed or refused to comply with the specific and attendant requirements set forth in the notice, including submitting a satisfactory plan of compliance to the department, the secretary shall issue an alternative order of suspension that states the cause(s) for the suspension, the effective date and time the suspension will begin, and any other information the secretary deems relevant. The alternative order of suspension shall be delivered to the local school board by physical or electronic mail.

 **E.** The alternative order shall also contain notice of a time, date, and place for a public hearing, prior to the beginning of suspension, to be conducted by the secretary or their designated hearing officer, at which the local school board may appear and show cause why the suspension should not be put into effect.

 **F.** Members of the suspended local school board shall notify the department in writing of the suspended local school board members’ intent to appear and show cause regarding why the suspension should not be put into effect.

[6.30.6.9 NMAC - Rp. 6.30.6.9 NMAC, 12/14/2021]

**6.30.6.10 PROCEDURES FOR EMERGENCY SUSPENSION:**

 **A.** The secretary may suspend a local school board on an emergency basis when the department has sufficient reason to believe that the educational process in the school district has been severely impaired or halted as a result of severe deficiencies.

 **B.** An emergency suspension may occur before a hearing. As soon as practicable after the secretary suspends a local school board, a public hearing shall be held in accordance with the procedures outlined in 6.30.6.12 NMAC.

 **C.** The secretary shall include in the written notice of disapproval status the following:

 **(1)** a description of the laws, rules, or standards that have not been followed; and

 **(2)** summary of the reasons why the educational process in a local school district has been deemed to be so severely impaired or halted as a result of such severe deficiencies to warrant disapproval status before a public hearing can be held.

 **D.** The notice shall provide the method by which the suspended local school board members may

declare their intent to appear for a hearing to show cause why the suspension should not be made permanent.

 **E.** If suspension is ordered before a public hearing can be held, the department shall immediately take control and act in the place of the local school board. The department shall act in lieu of the suspended local school board and shall execute all the legal authority of the local school board until such suspension is removed.

 **F.** The secretary may delegate authority to an individual or individuals to act in lieu of the suspended local school board, provided that any expenses or payments associated with the authority delegated by the secretary to act in lieu of the suspended local school board shall be the responsibility of the local school board.

[6.30.6.10 NMAC - Rp. 6.30.6.10 NMAC, 12/14/2021]

**6.30.6.11 DURATION OF SUSPENSION:** Suspension of a local school board shall continue until and the secretary removes the suspension. Nothing in this rule shall limit the term of office, membership, election, re-election, or recall of a local school board.

[6.30.6.11 NMAC - Rp. 6.30.6.11 NMAC, 12/14/2021]

**6.30.6.12 HEARING PROCEDURES:**

 **A.** A hearing shall be held:

 **(1)** within 30 calendar days of the date the secretary issues the alternative order of suspension; or

 **(2)** within 60 days after the secretary issues an emergency order of suspension, which may be extended by the secretary upon good cause shown.

 **B.** The local school board subject to an alternative order of suspension, within 30 calendar days of the date an alternative order of suspension is issued, may submit to the secretary a written statement explaining why the secretary should not issue an alternative order of suspension.

 **(1)** The written statement shall address only the cause(s) for suspension specified in the alternative order of suspension and the reasons for opposing the suspension, which shall address the factors outlined in Subsection C of 6.30.6.8 NMAC.

 **(2)** The written statement shall be submitted to the department’s office of general counsel.

 **C.** Only matters relevant to the contents of the order of suspension and the statement from the local school board required by this section may be raised at the hearing.

 **D.** The local school board subject to the alternative order or emergency suspension may be represented by legal counsel that is independent of the local school board’s counsel.

 **E.** The secretary or hearing officer may have the department’s legal counsel and other department staff present at the hearing and may seek their advice at any time.

 **F.** The rules of evidence and rules of civil procedure shall not apply to the hearing.

 **G.** Both parties shall have an opportunity to present their arguments.

 **H.** The hearing shall be presided over by the secretary or a hearing officer designed by the secretary, and shall be open to the public. A hearing officer shall, within two business days after the hearing, or sooner if requested by the secretary, submit a recommended decision to the secretary.

 **I.** The secretary or hearing officer shall open the hearing by presenting a summary of the reasons for the alternative order or emergency suspension.

 **J.** The local school board shall then commence a presentation to show why the secretary should not make permanent the alternative order or emergency suspension.

 **K.** The local school board may present witnesses and introduce documentary evidence to rebut the department’s recommendation of the alternative order or imposition of the emergency suspension. The local school board’s presentation and witnesses may be subject to objection or cross-examination.

 **L.** The secretary or hearing officer may question department staff or the local school board subject to the alternative order or suspension regarding the causes for the alternative order or emergency suspension and the reasons stated by the recipient for opposing the alternative order or emergency suspension.

 **M.** The secretary or hearing officer may question witnesses and rule on admission of testimony or documentary evidence, including exercising discretion to exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence.

 **N.** The secretary shall make permanent, modify, or withdraw the alternative order or emergency suspension within five business days after the hearing date.

  **(1)** The secretary’s decision shall be in writing and delivered to the local school board subject to the alternative order or emergency suspension.

 **(2)** The secretary’s written decision shall address the requirements for removing the suspension.

 **(3)** The decision may be delivered by physical or electronic mail at the address or email with school district.

 **O.** The local school board subject to the alternative order or emergency suspension may waive the timelines provided in this rule by submitting such waiver to the secretary in writing and signed by a person with authority to make the submission.

 **P.** An administrative record shall be made, including a record of the proceedings, which may be an audio recording. Payment may be required for receipt of the administrative record.
 **Q.** The matter may be settled by the parties at any time prior to the conclusion of the hearing. Any such agreement shall address the timelines provided in this rule.

 **R.** Expenses associated with defense of a suspended local school board member shall be borne by the suspended individual and not the local school district.

 **S.** The local school board subject to the suspension that is aggrieved by the secretary’s decision may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[6.30.6.12 NMAC - Rp. 6.30.6.12 NMAC, 12/14/2021]

**6.30.6.13 IMPLEMENTATION:**

 **A.** The secretary may employ or contract with consultants, contractors, or other individuals determined to be appropriate by the secretary in executing their legal authority over a suspended local school board, provided that any expenses or payments associated with the use of these groups or individuals shall be the responsibility of the local school board.

 **B.** While it shall not be the express purpose of a suspension under this rule to terminate, discharge, or replace licensed or unlicensed school district employees, the secretary shall possess and execute all the legal authority and responsibility of the suspended local school board subject to the following restrictions:

 **(1)** The retention of existing school district administrators and employees shall be considered.

 **(2)** Any termination or discharge of school district employees shall be conducted in accordance with the applicable sections of the School Personnel Act, Section 22-10A-1 et seq. NMSA 1978.

 **(3)** Any adverse personnel action of any licensed or unlicensed school district employee shall be limited to the authority set forth in the school district's policies of the suspended local school board.

 **(4)** The secretary shall not be obligated to honor any school district employment plans or letters of intent issued pursuant to Section 22-10A-14 NMSA 1978 that involve the hiring of an individual holding or seeking a certificate of waiver.

[6.30.6.13 NMAC - Rp. 6.30.6.13 NMAC, 12/14/2021]

**6.30.6.14 SEVERABILITY:** If any part or application of this rule is held invalid by a court of competent jurisdiction, the remainder or its application to other situations shall not be affected.

[6.30.6.14 NMAC - Rp. 6.30.6.14 NMAC, 12/14/2021]

**HISTORY OF 6.30.6 NMAC: [RESERVED]**