

PROPOSED REPEAL – STRIKETHROUGH

[Strikethrough] represents language the Department is proposing to delete.

TITLE 6 PRIMARY AND SECONDARY EDUCATION

CHAPTER 10 PUBLIC SCHOOL ADMINISTRATION PROCEDURAL REQUIREMENTS

PART 8 COMPULSORY SCHOOL ATTENDANCE

6.10.8.1 ISSUING AGENCY: Public Education Department

[6.10.8.1 NMAC N, 12/30/2004]

6.10.8.2 SCOPE: All New Mexico school districts, public schools including charter schools, and home schools.

[6.10.8.2 NMAC N, 12/30/2004]

6.10.8.3 STATUTORY AUTHORITY: Sections 22-1-2, 22-1-2.1, 22-2-1, 22-2-2, 22-2-14, 22-5-4, 22-5-14, 22-10A-31, 22-12-1 to 22-12-9, NMSA 1978, and 20 U.S.C. Sections 7111, 7112.

[6.10.8.3 NMAC N, 12/30/2004]

6.10.8.4 DURATION: Permanent

[6.10.8.4 NMAC N, 12/30/2004]

6.10.8.5 EFFECTIVE DATE: December 30, 2004, unless a later date is specified at the end of a section.

[6.10.8.5 NMAC N, 12/30/2004]

6.10.8.6 OBJECTIVE: To set forth the requirements for the implementation of the compulsory school attendance law. Specifically, this rule establishes requirements for the identification, reduction and reporting of truancy in all public schools including charter schools. In addressing truancy, the goal is to keep children in school until age eighteen and not to suspend, expel or outright punish them for being truant.

[6.10.8.6 NMAC N, 12/30/2004; A, 9/30/2009]

6.10.8.7 DEFINITIONS:

A. “**Attendance**” means students who are in class or in a school-approved activity. If a student is in attendance up to one half the total instructional time during a school day, the student will be counted as having attended one half of a school day. If the student attends school for more than one half of the total instructional time, the student will be counted as having attended for the full day.

B. “**Early identification**” means the process by which school districts including charter schools promptly determine and identify students who have excessive absences and tardiness from an instructional day. Early identification includes the school district’s, individual school’s or charter school’s defined system for recording, reporting, and summarizing daily attendance of its students and then providing that data to the district’s or charter school’s central administration.

C. “**Habitual truant**” means a student who has accumulated the equivalent of ten or more unexcused absences within a school year.

D. “**Home school**” means the operation by the parent of a school age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science.

E. “**Home school truant**” means a school age child whose parent(s)/guardian(s) have filed a home school notification about that child with the department but the child has failed or refused to participate in, or is no longer being offered, any home study program of instruction.

F. “**Intervention**” means the partnering that schools engage in with other agencies to implement administrative remedies, provide services and provide support programs that aggressively reduce if not eliminate truancy in a school district or charter school.

G. “**Prevention**” means school based innovative or proven successful programs, including alternative programs whether school based or non school based, that encourage regular and on-time attendance for students.

H. “**School age person**” means a person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year and who has not received a high school diploma or its equivalent. A maximum age of twenty one shall be used for a person who is classified as special education membership as defined in Section 22-8-21 NMSA 1978 or as a resident of a state institution.

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I. “Student in need of early intervention” means a student who has accumulated five unexcused absences within a school year.

J. “Tribe” means an Indian nation, tribe or pueblo located within New Mexico.

K. “Unexcused absence” means an absence from school or a class for which the student does not have an allowable excuse pursuant to the compulsory school attendance law or rules of the local school board, governing authority of a private school, or governing board of a charter school.

[6.10.8.7 NMAC N, 12/30/2004; A, 9/30/2009]

6.10.8.8 REQUIREMENTS:

A. It is the policy of this state that school age persons receive an education and do not dropout or otherwise withdraw prematurely prior to completing an educational program. To that end, a school age person shall attend public school, private school, home school or a state institution until the school age person is at least eighteen years of age unless that person has graduated from high school or received a general educational development certificate. A parent may give written, signed permission for the school age person to leave school in case of a documented hardship approved by the local superintendent.

B. Each local school board and charter school shall develop a written attendance policy that:

(1) in accordance with the definition of “attendance” stated in this rule, requires that class attendance be taken and maintained by class period for every instructional day for each student in each school or school program in the school district;

(2) provides excused absences for pregnant and parenting students as follows:

(a) provides at least ten days of excused absences for a student who provides documentation of the birth of the student's child and allows the student a time period to make up the work that the student missed that equals the number of days the student was absent for the birth of a child;

(b) provides excused absences for any additional days missed by a pregnant or parenting student for which a longer period of absence is deemed medically necessary by the student's physician and allows the student a time period to make up the work that the student missed that equals the number of days the student was absent;

(c) provides four days per semester of excused absences, in addition to the number of allowed absences for all students, for a student who provides appropriate documentation of pregnancy or that the student is the parent of a child under the age of thirteen needing care and allows the student a time period to make up the work that the student missed that equals the number of days the student was absent;

(d) clearly states that the pregnant or parenting student is responsible for communicating the student's pregnancy and parenting status to the appropriate school personnel if the student chooses to disclose the information; and

(e) provides that the school district or charter school shall provide a copy of the pregnant and parenting student absence policies to all students in middle, junior high and high schools; and

(3) requires each school to report unexcused absences of two or more classes up to fifty percent of an instructional day as one half day absence, and the unexcused absence of more than fifty percent of an instructional day to be counted as one full day absence;

(4) prohibits out of school suspension and expulsion as a punishment for unexcused absences and habitual truancy;

(5) uses withdrawal as provided in Section 22-8-2 NMSA 1978 only after exhausting intervention efforts to keep students in educational settings;

(6) provides for early identification of students with unexcused absences, students in need of early intervention, and habitual truants; provides for intervention strategies that focus on keeping students in need of early intervention in an educational setting; and further provides that:

(a) if a student is in need of early intervention, the school district or charter school shall contact the student's parent(s)/guardian(s) to inform them that the student has unexcused absences from school and to discuss possible interventions unless the parent(s)/guardian(s) has contacted the school to explain the absence and the excuse compiles with the school district attendance policy;

(b) a representative of the school district or charter school shall meet with the student in need of early intervention and his or her parent(s)/guardian(s) to identify the causes for the student's unexcused absences, identify what actions can be taken that might prevent the student's unexcused absences, identify possible school district, charter school and community resources to address the causes for the student's unexcused absences, and establish a corrective action plan to address the student's unexcused absences;

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- (c) the notification to the student's parent(s)/guardian(s) and the meeting with the parent(s)/guardian(s) must be respectful and in a language and in manner that is understandable to the student and the parent(s)/guardian(s);
(d) the corrective action plan must contain follow up procedures to ensure that the causes for the student's unexcused absences are being addressed;
(e) if the student is a habitual truant, the local school board, charter school or their authorized representatives shall, in addition, give written notice of the habitual truancy by mail to or by personal service on the student's parent(s)/guardian(s); the notice shall include a date, time and place for the parent to meet with the local school district or charter to develop intervention strategies that focus on keeping the student in an educational setting;
(f) if there is another unexcused absence after delivery of a written notice of habitual truancy, the student shall within seven days of this unexcused absence be reported to the probation services office of the judicial district where the student resides;
(g) if the student is a habitual truant the school shall document the following for each student identified as a habitual truant:
(i) attempts of the school to notify the parent that the student had unexcused absences;
(ii) attempts of the school to meet with the parent to discuss intervention strategies; and
(iii) intervention strategies implemented to support keeping the student in school.

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

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

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

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

[6.10.8.8 NMAC N, 12/30/2004; A, 9/30/2009; A, 5/15/2014]

6.10.8.9 INTERGOVERNMENTAL AGREEMENTS: In carrying out its duties under this rule and the compulsory school attendance law, school districts and charter schools shall take into consideration the sovereignty of a Native American tribe. While all children attending public schools will still be subject to being reported to the public education department if they are habitually truant, a school district or charter school shall respect tribal laws and traditions in carrying out its duties of early identification, intervention, and parental notification. To do so, school districts and charter schools shall adopt policies that:

- A. emphasize a better understanding of tribal customs, religious practices and laws;
B. consider entering into a memorandum of agreement, a memorandum of understanding, or some other form of intergovernmental agreement with Native American tribes;
C. consider respectful and effective ways to notify a parent(s)/guardian(s) of student in need of intervention and habitually truant Native American students;
D. consider follow up or reinforcement procedures after Native American children have undergone intervention through Native American or other agreed upon resources.

[6.10.8.9 NMAC N, 12/30/2004; A, 9/30/2009]

6.10.8.10 REPORTING REQUIREMENT:

A. Each school district and each individual charter school shall maintain class attendance records by class period for every instructional day for each student in each school or school program in the school district or charter school in a manner verifiable by the public education department.

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B. ~~The local superintendent of each school district or governing body or administrative head of a charter school will report absences with excused and unexcused identifiers through the student teacher accountability reporting system and certify that the information is being reported consistently at intervals and in a manner as specified by the public education department.~~

[6.10.8.10 NMAC – N, 12/30/2004; A, 9/30/2009]

6.10.8.11 HOME SCHOOLS: Upon receipt of verified information that a school age child whose parent(s)/guardian(s) have previously filed a home school notification about that child with the department but that child has failed or refused to participate in, or is no longer being offered, any home study program of instruction, the department may obtain a reasonable assurance from the parent(s) or guardian that the child is actually engaged in a home study program of instruction. In addition to any other remedies permitted by the compulsory school attendance law or the children's code, upon a determination that a home school student is repeatedly not (or no longer) engaged in a home study program of instruction, the department may order that the home school habitual truant attend a public school, or at the election of his parent/guardian, a private school. Prior to pursuing these other remedies, the public education department shall make a reasonable effort to accommodate the parents'/guardians' preference for maintaining their child in a home school.

[6.10.8.11 NMAC – N, 12/30/2004; A, 9/30/2009]

6.10.8.12 FAILURE TO COMPLY WITH THIS RULE: Failure to comply with this rule may be good and just grounds for the suspension or revocation of a department issued license or certificate, may result in notification by the department to the local school board, superintendent, school principal or governing body of a charter school that they have failed to meet requirements as prescribed by law or rules promulgated by the department, and may be grounds for seeking a court order to ensure compliance with the requirements of this rule.

[6.10.8.12 NMAC – N, 12/30/2004]

HISTORY of 6.10.8 NMAC: [RESERVED]