

PROPOSED AMENDMENT - STRIKETHROUGH

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TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 4 TOBACCO, ALCOHOL AND DRUG FREE SCHOOLS

6.12.4.1 ISSUING AGENCY: Public Education Department, hereinafter the department.

[6.12.4.1 NMAC - Rp, 6.12.4.1 NMAC, 12/15/2015; A, 11/07/2023]

6.12.4.2 SCOPE: This rule applies to school districts, local school boards and to state-chartered charter schools and governing bodies.

[6.12.4.2 NMAC - Rp, 6.12.4.2 NMAC, 12/15/2015]

6.12.4.3 STATUTORY AUTHORITY: ~~[This rule is promulgated by the secretary of public education and the public education department under the authority of]~~ Sections 9-24-8, 22-2-1, 22-2-2 and 22-5-4.4 NMSA 1978.

[6.12.4.3 NMAC - Rp, 6.12.4.3 NMAC, 12/15/2015; A, 11/07/2023]

6.12.4.4 DURATION: Permanent.

[6.12.4.4 NMAC - Rp, 6.12.4.4 NMAC, 12/15/2015]

6.12.4.5 EFFECTIVE DATE: December 15, 2015, unless a later date is cited at the end of a section.

[6.12.4.5 NMAC - Rp, 6.12.4.5 NMAC, 12/15/2015]

6.12.4.6 OBJECTIVE: The objective of this rule is to prohibit the use, possession and distribution of commercial tobacco products, electronic tobacco delivery devices, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs ~~[in school buildings, on school premises and by students at school sponsored activities away from school grounds.]~~ on school property and at off-campus school-sponsored events by students, school personnel, and visitors.

[6.12.4.6 NMAC - Rp, 6.12.4.6 NMAC, 12/15/2015; A, 11/07/2023]

6.12.4.7 DEFINITIONS:

A. "Administration" means any person who has disciplinary and managerial authority to enforce school policies including but not limited to principals, vice-principals, and office personnel.

~~[A.]~~ B. "Alcoholic beverage" means any beverage containing more than one-half percent alcohol by volume, and includes all distilled or rectified spirits, potable alcohol or any similar alcoholic beverages, including all fermented or blended beverages and dilutions or mixtures of one or more of these alcoholic beverages.

C. "Charter school" means a public school authorized by a chartering authority.

D. "Commercial tobacco product":

(1) means any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;

(2) any electronic delivery device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or

(3) any component, part, or accessory of Paragraph (1) or Paragraph (2) of this subsection, whether or not any of these contain tobacco or nicotine, including but not limited to, filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes; and

(4) does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

~~[B.]~~ E. "E-cigarette" and "electronic nicotine delivery system":

(1) means any electronic oral device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine or any other substances the use or inhalation of which simulates smoking; and

(2) includes any such device, or any part of it, whether manufactured, distributed, marketed or sold as an e-cigarette, e cigar, e pipe or any other product, name or descriptor; but

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~~(3) does not include any product regulated as a drug or device by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq.]~~

(1) means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device;

(2) includes, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, e-hookahs, vape pens, mods tank systems, or under any other product name or descriptor;

(3) includes any component, part, or accessory of the device, whether marketed or sold separately, including e-liquids, e-juice, cartridges, or pods, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and

(4) does not include any product regulated as a drug or device by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq.

~~[C.]~~ E. “Illicit drugs” means prescription and over-the-counter medications used for non-medical purposes, or not used as medically prescribed by lawfully authorized practitioners or as directed by the manufacturer’s literature, and include all supplemental dietary or nutrition ergogenic aids, stimulants, nootropics, adaptogens, painkillers, sedatives and anxiolytics, blood boosters, and other performance-enhancing drugs.

G. “Lighter” means a mechanical or electrical device typically used for lighting tobacco products.

~~[D.]~~ H. “Mood-altering substances” means substances that change, or are capable of changing, a person’s emotional state, and include all stimulants, opioids, intoxicative inhalants, and hallucinogens.

~~[E.]~~ “Nicotine liquid container” means a bottle or other container of any substance containing nicotine where the substance is sold, marketed or intended for use in an e cigarette.

~~F.~~ “School personnel” includes all administrators, principals, teachers, counselors, social workers, speech therapists, psychologists, nurses, librarians and other support staff who is employed by a school, or who perform services for the school on a contractual basis.

~~G.~~ “Tobacco product” means any product made or derived from tobacco that is intended for human consumption, including any component, part or accessory of a tobacco product. This includes, among other products, cigarettes, cigars, pipe tobacco, roll your own tobacco, dissolvable tobacco, and smokeless tobacco. Smokeless tobacco means any snuff or chewing tobacco.]

I. “Off-campus, school-sponsored event” means any event sponsored by the school or school district that is not on school property, including sporting events, day camps, field trips, dances, or theatrical productions.

J. “Parent” or “Guardian” means any person that has status as the legal guardian of a student.

K. “School district” means school districts or state-chartered charter schools.

L. “School personnel” means any person employed by a public school in New Mexico.

M. “School property” means all facilities and property, including land, whether owned, rented, or leased by a school district, and all vehicles owned, leased, rented, contracted for, or controlled by a school district used for transporting students, school personnel, or visitors.

N. “Signage” means signs declaring that all school property is commercial tobacco and nicotine product, electronic delivery device, alcoholic beverage, mood-altering substance, and illicit drug free.

O. “Student” means any person enrolled in the state of New Mexico’s public school educational system.

P. “Visitor” means any person subject to this policy that is not a student or school personnel as defined above and includes school volunteers.

[6.12.4.7 NMAC - Rp, 6.12.4.7 NMAC, 12/15/2015; A, 11/07/2023]

6.12.4.8 REQUIREMENTS: Each local school board or governing body shall establish a tobacco, alcohol and drug free school policy:

A. The policy shall provide specific rules of conduct prohibiting the use, possession, and distribution of commercial tobacco and nicotine products, [e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs in school buildings, on school premises and by students at school-sponsored activities away from school grounds] electronic delivery devices, alcoholic beverages, mood-altering substances and illicit drugs on school property and at off-campus school-sponsored events by students, school personnel, and visitors. These activities are prohibited at all times.

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B. Each school district ~~[and state-chartered charter school]~~ shall detail the prohibited acts and activities under the policy, and shall establish adequate provisions for its enforcement, including the enumeration of possible sanctions or disciplinary action, consistent with applicable statutory and case law.

C. Each policy shall include progressive and supportive disciplinary action beginning with options to promote positive student outcomes such as tobacco education or referral to counseling, parent conferences, and school or community service. Referrals to resources to help students overcome nicotine addictions shall be provided when developmentally appropriate. Parents or guardians shall be notified of all violations and actions taken by each school district.

D. All school personnel shall abide by the policy and are responsible for enforcement of the policy. Each school district may establish procedures necessary to implement the policy among school personnel. Disciplinary penalties may be imposed in accord with policies of the district regarding conduct and disciplinary actions.

E. Referrals to resources to help school personnel overcome nicotine addictions shall be provided to school personnel who are found to be in violation of this policy. Each school district may establish procedures for school personnel to receive training in the provisions of this policy, existing and emerging commercial tobacco products, trends in youth commercial tobacco and nicotine use, prevention education, and cessation support on an annual basis.

F. Each school district shall prohibit the promotion of tobacco products, electronic delivery devices, alcoholic beverages, mood-altering substances or illicit drugs on the school property or at off-campus, school-sponsored events. This includes promotion of these products via gear, technology accessories, bags, clothing, any personal articles, signs, structures, vehicles, flyers, or any other materials.

G. Each school district policy shall require school administration to provide referrals to resources to help students and school personnel overcome nicotine addiction.

~~[C.]~~ **H.** The policy shall provide that no school employee who in good faith reports any known or suspected use, possession or distribution of alcoholic beverages, mood-altering substances or illicit drugs shall be held liable for any civil damages as a result of such report or efforts to enforce the policy.

~~[D.]~~ **I.** Each school district ~~[and state-chartered charter school]~~ shall develop and implement a procedure for effectively communicating the policy to students, their parents and families, school personnel, visitors on school ~~[premises]~~ property, and to local residents, groups, businesses and organizations served by the school. Such communication may include publishing information in student and employee handbooks, school district websites, announcements at school-sponsored events, and posting conspicuous, appropriate signage in buildings and on school property, including at entrances to school buildings and athletic events, in a manner and location that adequately informs students, school personnel, and visitors of the policy.

~~[E.]~~ **J.** Each school district ~~[and state-chartered charter school]~~ shall post conspicuous notices on all school ~~[premises]~~ property prohibiting the use, possession and distribution of tobacco products, e-cigarettes and nicotine liquid containers, alcoholic beverages, mood-altering substances and illicit drugs, in school buildings, on school ~~[premises]~~ property, and by students at off-campus, school-sponsored events away from school grounds. Each school district shall post appropriate signage on school premises prohibiting the use, possession and distribution of commercial tobacco products, electronic delivery devices, on school property and by students at off-campus school-sponsored events in a manner and location that adequately notifies students, school personnel, and visitors, including at the entrance to school buildings and athletic events.

[6.12.4.8 NMAC - Rp, 6.12.4.8 NMAC, 12/15/2015; A, 11/07/2023]

6.12.4.9 ~~[EXCEPTION]~~ EXCEPTIONS:

A. ~~[Sections 6 and 8]~~ Section 8 of this rule shall not include the lawful possession or use ~~[by a minor]~~ of a tobacco-cessation product approved by the United States food and drug administration.

B. It shall not be a violation of this policy for a person to possess or provide tobacco or lighters to any other person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice. It shall not be a violation of this policy to use tobacco or a lighter as part of an educational experience related to indigenous tobacco practices that has been approved by administration.

[6.12.4.9 NMAC -N, 12/15/2015; A, 11/07/2023]

HISTORY OF 6.12.4 NMAC:

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PRE-NMAC HISTORY: The material in this regulation is derived from that previously filed with the State Records Center and Archives under: State Board of Education Regulation No. 94-2, Regulation on Tobacco Free School Districts, filed July 19, 1994.

History of Repealed Material:

6.12.4 NMAC, Tobacco, Alcohol and Drug Free School Districts, filed 5/16/2001 - Repealed effective 12/15/2015.

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