

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS
PART 6 SUSPENSION OF AUTHORITY OF A 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 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 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; -

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; and

D. “School board” means a local school board or a charter school governing board established pursuant to NMSA 22-8B-5.D.

[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 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 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. The secretary shall consult with the commission when the secretary is seeking to suspend a governing board of a state charter school.

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 school board regarding the area or areas of noncompliance with requirements of law, department standards, or department directives;

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(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 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 school board, provided that any expenses or payments associated with the authority delegated by the secretary to act in lieu of the suspended school board shall be the responsibility of the school board as part of its operational funds.

E. Money budgeted by a 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 school board, the department shall deliver written notification to a 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 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 of a governing board of a state charter school, 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 of the governing board, 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 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 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 school board may appear and show cause why the suspension should not be put into effect.

F. Members of the suspended school board shall notify the department in writing of the suspended 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 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 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 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 school board members may declare their intent to appear for a hearing to show cause why the suspension should not be made permanent.

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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 school board. The department shall act in lieu of the suspended school board and shall execute all the legal authority of the 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 school board, provided that any expenses or payments associated with the authority delegated by the secretary to act in lieu of the suspended school board shall be the responsibility of the 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 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 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 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 school board required by this section may be raised at the hearing.

D. The school board subject to the alternative order or emergency suspension may be represented by legal counsel that is independent of the 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 school board shall then commence a presentation to show why the secretary should not make permanent the alternative order or emergency suspension.

K. The 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 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 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 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 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 school board member shall be borne by the suspended individual and not the school district.

S. The 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 school board, provided that any expenses or payments associated with the use of these groups or individuals shall be the responsibility of the 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 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 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]