

Statement of Policy

A primary responsibility of the Pojoaque Valley Public Schools and their professional staff shall be to instill in all students an appreciation of our representative form of government, the rights and responsibilities of the individual, and the legal processes whereby necessary changes are brought about.

The school is a community and the rules and regulations 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.

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 established processes.

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, safe environment in the 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 by students and supported by their parents.

The schools have both the authority and responsibility to ensure that suitable rules of student conduct and appropriate disciplinary processes are established.

I. General Provisions

A. Definitions. For the purpose of this policy, any words, terms, or phrases defined herein shall have the meanings stated.

1. **“Administrative authority”** means the superintendent, a principal, or a person authorized to act officially in a matter involving school discipline or the maintenance of order.

2. **“NMSA 1978”** means the 1978 compilation of New Mexico Statutes Annotated.

3. **“Parent”** means the natural parent, a guardian, or other person or entity having custody and control of a student who is subject to the Compulsory School Attendance Law, or the student if he/she is not subject to compulsory attendance.

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

5. **“Student”** means a person who is enrolled in one or more classes in the school system or a person who was a student during the previous school year, and is participating in a school-sponsored activity connected with his or her prior status as a student.

6. **“Willful”** or **“Willfully”** means in connection with an act or conduct, when the student knew, or should have known, of the rule in question, or that the conduct was prohibited.

B. Jurisdiction over Students. All officials, employees, and authorized agents of the 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 the 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 school’s control, regardless of place.

C. School Authority over Non-Students. School officials have the following forms of limited authority over non-students whose actions adversely affect school operations or activities.

1. **On School Property.** The Board of Education has the authority to prohibit entry or remove from any school building, grounds or facilities any person who refuses to identify him/herself and state a lawful purpose for being present; who is disruptive to the educational process, or who is engaging in disorderly or threatening conduct. Any such person may be removed by school authorities, who may use reasonable physical force to accomplish the removal.

Alternately, a person who refuses to identify him/herself and state a lawful purpose for being present, who is disruptive to the educational process, or who is engaging in disorderly or threatening conduct, and who then also refuses a lawful request to leave school premises, may be subject to arrest by law enforcement authorities for a variety of possible criminal offenses. Possible offenses include but are not limited to interference with the educational process, disorderly conduct or criminal trespass. A person who identifies him/herself and states a lawful purpose may nevertheless be subject to removal by school officials or to arrest by law officers if he/she is engaging in criminal activity or for engaging in prohibited activities as defined in this policy.

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 disorderly conduct, criminal trespass (after refusing a lawful custodian’s request to leave) or interference with the educational process, school authorities may request the assistance of law enforcement agencies to remove or arrest the offenders.

II. Rules of Conduct for the Pojoaque Valley Public Schools.

The following acts are prohibited in all schools within the district.

A. Prohibited Activities. The commission of or participation in the activities designated and defined below is prohibited in all public schools in the district, and is prohibited by students whenever they are subject to the control of school authorities.

1. Acts Prohibited by this Policy.

a. Criminal and delinquent acts, which include, but are not limited to:

(1) Willful interference with the educational process of any public school, by threatening to commit, or inciting others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures, or functions of a public school;

(2) Arson;

(3) Assault and/or battery;

(4) Criminal damage to property;

(5) Criminal libel;

(6) Criminal trespass;

(7) Unlawful assembly or disturbing lawful assembly;

(8) Extortion;

(9) Larceny, robbery or burglary;

(10) Illegal sale, possession, transportation or use of:

(a) alcoholic beverages, controlled substances,

(b) firearms or other weapons, or

(c) explosives;

(11) Possession, sale or use of tobacco products, including, but not limited to nicotine gum, nicotine patches, and electronic cigarettes;

(12) Verbal Abuse/Intimidation.

b. Disruptive conduct includes, but is not limited to:

(1) Willfully obstructing or preventing freedom of movement or use of property, facilities, or parts of any public school, or the right of ingress or egress;

(2) Willfully committing any act, or attempting, threatening or inciting others to commit any act, which does or would reasonably be expected to disrupt, impair, interfere with, or obstruct the lawful mission, purposes, processes, or procedures of the public schools;

(3) Willfully impairing the ability of the public schools in their efforts to provide instruction.

(4) “Habitually Disruptive Behavior” is defined as disruption in the classroom, on school grounds, in school vehicles, at school activities or events more than five times during the school year for behavior which is initiated, willful, and overt and which requires attention of school personnel to deal with the disruption. However, no child shall be declared to be a habitually disruptive student prior to the development of a remedial discipline plan or behavior contract for such child.

c. Refusal to identify self;

d. Refusal to cooperate with school personnel covers situations where students willfully disobey lawful instructions or orders from school personnel or agents such as volunteer chaperons whose responsibilities include supervision of students. This offense includes, but is not limited to:

(1) Willfully refusing a direction to cease any conduct which a supervisory person, or designee, in charge of a class or other activity has clearly identified to the student as a hindrance to the activity;

(2) Willfully refusing a direction to cease engaging in disruptive conduct;

(3) Willfully refusing or failing to leave a school facility or school-sponsored activity after being directed to do so by an administrative authority or designee;

(4) Willfully refusing or failing to abide by restrictions on student privileges or other lawful conditions imposed by an administrative authority as a disciplinary measure.

e. Gang related activity;

f. Sexual harassment;

g. Willful violation of the Student Attendance Policy No. 300 after the student has been reported to the probation services officer.

2. Definitions for Prohibited Acts.

a. **“Criminal Acts”** are any acts defined as criminal under federal, state, county or municipal criminal ordinances. Such acts include the crime of willful interference with the educational process of any school within the district.

b. **“Disruptive Conduct”** means willful conduct which:

(1) materially and in fact disrupts or interferes with the operation of the public schools 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.

c. **“Refusal to Identify Self”** means a student's or non-student's willful refusal, upon request from school personnel known or identified as such to the student, to identify himself or herself accurately.

d. **“School Personnel”** means all members of the staff, faculty, and administration employed by The Board of Education, and includes bus drivers and their aides. The term also includes authorized agents, such as volunteer chaperons, whose responsibilities include supervision of students.

e. **“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.

f. **“Gang related activity”** is behavior prohibited under Policy 346.

g. **“Sexual harassment”**, regarding student-to-student conduct, means unwelcome or unwanted conduct of a sexual nature (verbal, non-verbal, or physical) as defined and prohibited in Policy 322.

III. Regulated Activities.

All other areas of student conduct shall be regulated within legal limits by the Board of Education as it deems appropriate. Conduct by non-students which adversely affects school operations shall be regulated within legal limits pursuant to any of the forms of authority described above.

A. “Legal Limits” include the requirements of the federal and state constitutions, 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.

B. Activities subject to Board of Education policy within legal limits include, but are not limited to:

1. School attendance;
2. Use of, and access to the public buildings, 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. Student's dress and personal appearance;
4. Speech and assembly within the public schools;
5. Publications distributed in the public schools;
6. Participation in extracurricular activities;
7. The existence, scope and conditions of availability of student privileges;
8. The use of controlled substances, alcohol, and tobacco products, including, but not limited to, nicotine patches, nicotine gum, and electronic cigarettes, in the public schools.

IV. Enforcing Rules of Conduct.

A. Basis for Disciplinary Action. A student may appropriately be disciplined by administrative authorities for violating rules governing “prohibited” or “regulated” activities as defined in this policy or in other rules of conduct promulgated by an administrative authority pursuant to school Board of Education authorization. The existence of a specific rule is not a prerequisite for disciplining a student for conduct which endangers the health or safety of students, school personnel, or others for whose safety the public school is responsible, or for conduct which reasonably appears to threaten such dangers if not restrained.

B. Selection of Disciplinary Sanctions. Within legal limits, the Board of Education has the discretion to determine the appropriate sanction(s) to be imposed for violations of rules of student conduct. The Board of Education authorizes administrative authorities to make such determinations at such levels and in such decisional framework(s) as appropriate.

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. Administrative authorities shall not enforce school disciplinary rules or impose punishments in a manner, which discriminates against any student based on race, religion, color, national origin, ancestry, sex, or handicap, except to the extent otherwise permitted or required by law or regulation.

This policy 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 handicap, rather than on other differences in individual cases or students.

3. Corporal Punishment. Board of Education Policy 345 prohibits corporal punishment in any form. However, in the spirit of the present policy (336), the Board affirms its strong concern that safe, orderly schools be operated, and that all employees assist with the maintenance of a disciplined atmosphere.

4. Detention, Suspension, and Expulsion. Where detention, suspension, and/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 Section V below. Discipline, including suspensions or expulsions, of special education students shall be subject to the further requirements of the following subsection.

C. Discipline of Students with Disabilities.

1. Initial Determination.

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

- (1) Long-term suspension or expulsion, or;
- (2) Any other disciplinary change of the student's current educational placement.

b. The following rules shall also apply when a disciplinary change of placement is contemplated for a student as to whom the school district had knowledge, as provided in 34 CFR §300.527, that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

c. The principal, or designee, shall conduct an informal administrative conference to determine if disciplinary action is warranted. The purpose of the conference shall be to:

(1) Conduct interviews;

(2) Afford the student an opportunity to explain the alleged misconduct;

(3) Determine whether the student has an Individualized Education Program (IEP) in accordance with the Individual with Disabilities Education Act (IDEA) or a plan in accordance with Section 504 of the Rehabilitation Act of 1973 (hereinafter “504” Plan) in effect, and if so, whether the IEP or 504 Plan contains alternative disciplinary strategies; and

(4) Determine whether a referral for formal evaluation should be made if an IEP or 504 Plan is not in effect and a disability is suspected.

d. The disciplinary hearing officer shall make a determination as to whether the conduct warrants long-term suspension or expulsion.

e. Nothing herein shall preclude the principal from imposing a short-term suspension subject to the further provisions of 34 CFR §§ 300.519-300.520, and/or seeking an injunction from a court of competent jurisdiction or an order from an IDEA hearing officer, to exclude or change the placement of a student when the principal, and the special education director believe that maintaining the current placement is substantially likely to result in injury to the student or others.

2. Parent Notification.

a. Upon a determination by the principal or designee that long-term suspension or expulsion will not be pursued, the principal or designee shall notify the parent(s) of the incident.

b. Upon a determination by the principal or designee that the student's IEP or 504 Plan sets forth alternative discipline strategies for the behavior, the principal or designee shall insure implementation of the alternative strategies and notify the parent(s) accordingly.

c. Upon a determination by the principal or designee that an IEP or 504 Plan is not in effect for the student and that a referral for formal evaluation should be made, the principal or designee shall refer the student for formal evaluation and shall notify the parent(s) in accordance with applicable requirements.

d. Upon a determination by the principal or designee that long-term suspension or expulsion will be pursued and that an IEP or 504 plan is in effect for the student, the principal or designee will notify the parent(s) of the contemplated disciplinary action and schedule an IEP meeting. The site specialist or case manager will:

- (1) Schedule IEP meeting to conduct a manifestation inquiry and,
- (2) notify the parents of the meeting.

e. Manifestation Inquiry.

(1) The site specialist/case manager shall convene the IEP or 504 meeting to determine if the student's behavior is a manifestation of the disability and whether the student's IEP or 504 Plan is appropriate.

(2) An IDEA manifestation inquiry shall be conducted by the IEP team and other qualified personnel.

(3) If the determination is made that the behavior is a manifestation of the disability, the IEP team or 504 Committee shall revise the IEP or 504 Plan as needed to address the needs of the student. The student may not be suspended or expelled from school for more than ten (10) school days in a school year unless such action is allowable under 34 C.F.R. § 300.519 without establishing a pattern of exclusion or the school district obtains an order from a court of competent jurisdiction to remove the student from school or to change the student's placement.

(4) If the determination is made that the behavior is not a manifestation of the disability but that the student's program is inappropriate, the IEP team or 504 Committee shall revise the IEP/504 Plan. The student may not be suspended or expelled from school for more than ten (10) school days in a school year unless such action is allowable under 34 C.F.R. § 300.519 without establishing a pattern of exclusion or the school district obtains an order from a court of competent jurisdiction to remove the student from school or to change the student's placement.

(5) If the determination is made that the misbehavior is not a manifestation of the disability and the student's program is appropriate, the principal or designee may proceed to initiate long-term suspension or expulsion proceedings in accordance with Subsection G of 6.11.2.12, NMAC.

3. Special Rule.

a. This rule shall apply, when a student with a disability is determined to have:

- (1) Brought a weapon to school or a school function; or

(2) Knowingly possessed or used illegal drugs or sold or solicited the sale of a controlled substance while at school or a school function.

b. A student who has a disability in accordance with Part B of the IDEA and who is determined to have engaged in any conduct described in Paragraph a.(1) and/or a.(2) above may be immediately placed in an interim alternative educational setting for not more than forty-five (45) calendar days during which the IEP team will conduct a manifestation determination inquiry and any further disciplinary proceeding.

The interim alternative educational setting shall be determined by the IEP Team, which includes the student's parent(s), in compliance with all applicable requirements. Parental consent to the alternative placement is not required.

c. If the parent(s) of a student placed in an alternative educational setting pursuant to this Special Rule request(s) a due process hearing pursuant to Part B of the IDEA, the hearing shall be expedited, and the student shall remain in the alternative educational setting during the pendency of any proceedings, unless the parent(s) and principal or designee agree otherwise or the IDEA hearing officer orders otherwise.

d. If, upon final determination, it is decided that the offense involving the weapon or drug was not a manifestation of the student's disability, the principal or designee may proceed to initiate long-term suspension or expulsion proceedings.

4. Functional Behavioral Assessments and Behavioral Intervention Plans.
The site specialist/case manager will ensure that a functional behavioral assessment is conducted and a behavioral intervention plan for each student with a disability under the IDEA is developed or reviewed and revised by the IEP team not later than 10 business days after first removing the student from his or her current educational placement for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under, including an action described in Subsection D of 6.11.2.11, NMAC.

5. Alternative Educational Services During the Period of Long-Term Suspension or Expulsion.

a. Alternative educational services for a student with a disability upon whom a long-term suspension or expulsion has been imposed for behavior that was not a manifestation of the disability shall be provided as follows:

(1) During the period of disciplinary exclusion from school, each student who is disabled pursuant to the IDEA must continue to be offered a program of appropriate educational services that is individually designed to meet his or her unique learning needs and provides a free appropriate public education (FAPE). Such services may be provided in the home, in an alternative school, or in another setting as determined by the IEP team.

(2) School districts may cease educational services to students who are disabled pursuant to Section 504 during periods of disciplinary exclusion from school that exceed ten (10) school days if students who are not disabled do not continue to receive educational services in similar circumstances.

b. Provision of Alternative Educational Services.

(1) The parent(s) shall be notified of the IEP meeting.

(2) An IEP is developed to reflect the alternative education services and placement to be provided to the student during the period of long-term suspension or expulsion.

(3) If the parent(s) of an IDEA student request a due process hearing, the hearing shall be expedited and the student shall remain in the alternative educational setting during the pendency of any proceedings, unless the parent(s) and principal or designee agree otherwise.

c. The student will receive credit during the period of long-term suspension or expulsion, that an IDEA student must receive services to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

D. Search and Seizure. A student's person or property while under the authority of the schools and, school property assigned to a student, are subject to search, and items found are subject to seizure. For details, see policy 339.

E. Enforcing Attendance Requirements. The Board of Education grants authority to the Pojoaque Valley Public Schools administration for the enforcement of the provisions of the Compulsory School Attendance Law for students enrolled in the schools of the district. An administrative authority who has reason to believe a student is violating the Compulsory Attendance Law shall:

1. Initiate the prescribed statutory procedures for enforcement by sending written notice by certified mail to the parent, and;

2. Proceed with whatever administrative sanctions are considered appropriate pursuant to Pojoaque Valley Public Schools Policy 300. If the violation continues after the parent has received the written notice, the administrative authority shall report the matter to the probation services office as required by statute.

A willful violation of the Compulsory School Attendance Law following the report to the Probation Services Office may be grounds for discipline.

A willful violation of the Compulsory School Attendance Law following the report to the Probation Services Office may be grounds for student discipline pursuant to Section V below. If

there is an indication that the continued violation can be ascribed to the parent's act, or omission, the administrative authority shall also consider whether to seek or initiate a criminal action against the parent.

V. Procedure for Detentions, Suspensions, and Expulsions; Hearing; Review.

The authority of the Board of Education to prescribe and enforce standards of conduct for public school students must be exercised consistently with the constitutional safeguards of individual student rights. The right to a public education is not absolute; it may be taken away, temporarily or permanently, for violation of school rules. But, it is a property right which may only be denied where school authorities have adhered to the procedural safeguards required to afford students due process of law. When a student is suspended or expelled from school, he/she is not to be on any Pojoaque Valley Public Schools campus or attend any Pojoaque Valley Public Schools school-sponsored activity for the duration of the suspension or expulsion.

The administrative authority shall have the power to suspend privileges of the school from any student guilty of gross misconduct or continual insubordination to school organization and/or regulations. Any student who is disruptive to other students with particular reference to gang activity, vandalism, truancy, fighting, gambling, insubordination, hazing, foul and abusive language, sexual harassment, or use of drugs, alcohol or tobacco, including, but not limited to, nicotine patches, nicotine gum, and electronic cigarettes, may be suspended at the option of the building principal and the superintendent of schools, subject to certain conditions for reinstatement.

Failure to comply may result in legal or other disciplinary action against the student.

Subject to the Board of Education's power to review any administrative disciplinary penalty of expulsion, long term suspension, in-school suspension in excess of one semester or denial or restriction of student privileges for one semester or longer, the Administration may initiate and carry out the following disciplinary actions:

A. Immediate Removal. "Immediate Removal" means the removal of a student from school for one school day or less under emergency conditions and without a prior hearing. Students whose presence poses a continuing danger to persons or property or an ongoing threat of interfering with 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.

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.

3. The school shall exert reasonable efforts to inform the student's parent of charges against the student and the action taken as soon as practicable. If direct contact is not

established by the middle of the school day following the immediate removal, the school shall forthwith prepare a written notice with the required information and deposit the notice for mailing to the parent's address of record.

B. Temporary Suspension. “Temporary Suspension” means the removal of a student from school for a specified period of ten (10) school days or less after a rudimentary hearing conducted in accordance with the requirements below.

A student facing temporary suspension shall first be informed of the charges against him or her, and if she/he denies them shall be told what evidence supports the charge(s) and be given an opportunity to present his/her version of the facts. The following rules apply:

1. The “hearing” may be an informal discussion and may follow immediately after the “notice” is given.

2. Unless the administrative authority decides a delay is essential to permit a fuller exploration of the facts, this discussion may take place, and a temporary suspension may be imposed, within minutes after the alleged misconduct has occurred.

3. A student who denies a charge of misconduct shall be told what act(s) he/she is accused of committing, shall be given an explanation of the evidence supporting the accusation(s), and shall then be given the opportunity to explain his or her version of the facts. The administrative authority is not required to divulge the identity of informants other than school personnel. The administrative authority is required to disclose the substance of all evidence on which she/he proposes to base a decision in the matter.

4. 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 the foregoing is prohibited.

5. The school shall make reasonable efforts to inform the student's parent(s) of the charges against the student and their possible or actual consequence as soon as practicable. If direct contact has not been established by the end of the first full day of suspension, the school shall on that day deposit a written notice, with the required information for mailing, to the parent's address of record.

C. In-School Suspension. “In-school suspension” means suspending a student from one or more regular classes while requiring the student to spend the time in an alternate classroom or other designated area at the same school.

In-school suspension may be imposed with or without further restrictions of student privileges. Any student who is placed in an in-school suspension which exceeds ten (10) school days must be provided with an instructional program that meets both local educational requirements and the Educational Standards for New Mexico Schools. Student privileges, however, may be restricted for longer than ten (10) days.

In-school suspensions of any length shall be accomplished according to the procedures for a temporary suspension as outlined above.

D. Detention. “Detention” means requiring a student to remain inside or otherwise restricting his or her liberty at times when other students are free for recess or to leave school. Detention may be imposed in connection with in-school suspension, but is distinct from in-school suspension, in that it does not entail removing the student from any of his or her regular classes.

E. Long-Term Suspension and Expulsion. “Long-term suspension” means the removal of a student from school for a specified time exceeding ten (10) days. “Expulsion” means the removal of a student from school, either permanently, or for an indefinite time exceeding ten (10) school days. The superintendent or his designee will initiate procedures leading to long-term suspensions or expulsion. A temporary suspension may be imposed while the procedures for long-term suspensions or expulsion are activated. However, where a decision following the required formal hearing is delayed beyond the end of the temporary suspension, the student must be returned to school pending the outcome of the hearing.

The following rules shall govern the imposition of long-term suspension or expulsions:

1. Definitions.

a. Hearing Authority; Disciplinarian. “Hearing Authority” means the superintendent, or designee, who is designated to hear evidence and determine the facts of a case at a formal hearing. The same person may perform both functions, but no person shall act as hearing authority, or disciplinarian, in a case in which (s)he was directly involved or witnessed the incident(s) in question, or if (s)he has prejudged disputed facts or is biased for or against any person who will actively participate in the proceedings, except as an initiating administrative authority. Disciplinarian means a person or group authorized to impose punishment after the facts have been determined by a hearing authority.

b. “Review Authority” is The Board of Education who will review the hearing authorities' final decision to impose a long-term suspension or expulsion if the aggrieved student, after the formal hearing, wishes to exercise his/her right to review the decision.

2. Initiation of Procedures. An administrative authority shall initiate procedures for long-term suspension or expulsion, of a student, by designating a hearing authority and disciplinarian, scheduling a formal hearing in consultation with the hearing authority and preparing and serving a written notice meeting the requirements below.

a. Service of Notice. The written notice shall be addressed to the student, through his or her parent(s), and shall be either personally delivered or mailed to the parent.

b. Timing of Hearing. The hearing shall be scheduled no sooner than five (5) nor later than ten (10) school days from the date of delivery or receipt of the notice, whichever is earlier. The hearing authority may grant or deny a request to delay the hearing.

c. Contents of Notice. The written notice must contain all of the following information:

(1) 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 proposed penalty;

(2) The date, time, and place of the hearing, and a statement that both the student and parent are entitled and urged to be present.

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

(4) 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 designated contact person.

(5) A complete description of the procedures which will govern the conduct of the hearing.

(6) The name, business address, and telephone number of a contact person through whom the student, parent, or designated representative may request a delay or seek further information, and;

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

3. Delay of Hearing; Student's Status During Delays. The hearing authority shall have discretion to grant or deny a request by the student or the appropriate administrative authority to postpone the hearing. Where a student has been suspended temporarily, and a postponed hearing 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:

a. the student and parent have knowingly and voluntarily waived the student's right to return to the school pending the outcome of the formal proceedings, or;

b. the appropriate administrative authority has conducted an interim hearing prior to the end of the temporary suspension period in accordance with paragraph (5)

below and the hearing officer determines the grounds are sufficient to support the student's continued exclusion pending the outcome of the formal procedures, or;

c. the provisions of the following paragraphs apply.

4. Waiver of Hearing; Voluntary Compliance or Negotiated Penalty. A student and his or her parent may elect to waive the hearing and review and negotiate a mutually acceptable penalty with the hearing authority. 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 hearing authority.

5. Interim Hearing. If a formal hearing would occur on a date beyond the temporary suspension period, the initiating authority may obtain an interim hearing before the hearing authority prior to the expiration of the temporary suspension for the limited purpose of determining whether there are sufficient grounds to support the student's continued exclusion pending the outcome of the formal procedures.

a. Notice of the interim hearing may be given by hand delivery, facsimile, telephonic contact or other means reasonably calculated to give actual notice to the parent(s) and student of the time, place and purpose of the interim hearing. Notice may be given concurrently with a request for postponement.

b. The interim hearing shall be for the limited purpose of determining whether there are sufficient grounds to continue the student's exclusion pending the outcome of the formal procedures.

c. The interim hearing shall be informal.

6. Continued Exclusion.

a. The administrative authority shall have the burden of persuasion in establishing cause for the students continued exclusion. The hearing authority may authorize the continued exclusion if (s)he finds:

(1) that the charges constitute criminal or delinquent acts, an act which otherwise endangers the health or safety of personnel or is habitually disruptive behavior, and

(2) lesser sanctions would not protect the health or safety of school personnel or that of students for whose safety the public school is responsible.

b. During the period of the student's extended exclusion, the administrative authority shall permit the parent(s) to obtain assignments and shall accept completed assignments from the student.

7. Procedure for Hearing and Decision. The following rules govern the conduct of the formal hearing and the ultimate decision.

- a. The school shall have the burden of proof of misconduct;
- b. The student and his or her parent shall have the following rights, any of which may be waived in writing.
 - (1) The right to be represented by legal counsel or other designated representative;
 - (2) The right to present evidence, subject to reasonable requirements of substantiation at the discretion of the hearing authority and exclusion of evidence deemed irrelevant or redundant;
 - (3) The right to confront and cross-examine adverse witnesses, subject to reasonable limitation by the hearing authority;
 - (4) The right to have a decision based solely on applicable legal rules, including the governing rules of student conduct, and the evidence presented at the hearing.
- c. 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 and/or a designated representative have appeared.
- d. 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, received notice of the hearing. If so, the hearing authority shall review the school's evidence to determine whether it is sufficient to support the charge(s) of misconduct.
- e. The hearing authority, who is also a disciplinarian, shall impose the proposed sanction or other appropriate measure if he/she finds that the allegations of misconduct have been proved.
- f. Arrangements to make a tape recording or keep minutes of the proceeding shall be made by the administrative authority who scheduled the hearing and prepared the written notice.
- g. The hearing authority shall prepare, and mail or deliver, to the student through the parent, a written decision including reasons therefore, within five working days after the hearing. The hearing authority shall include in the report a statement of the penalty, if any, to be imposed.

h. The hearing authority's decision shall take effect immediately upon notification to the parent through receipt of the written decision. If notification is by mail, the parent shall be presumed to have received the notice on the fifth calendar day after the date of mailing.

8. Effect of Decision. If the hearing authority decides that no allegation(s) of misconduct have been proved, or 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 hearing authority imposes any sanction on the student, the decision shall take effect immediately upon notification to the parent, even if the student subsequently appeals to the Board of Education for review.

9. Review by Board of Education. A student aggrieved by the hearing authority's decision after a formal hearing shall have the right to have the decision reviewed by The Board of Education 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 student request for review must be submitted to the Board within ten (10) school days after the student is informed of the hearing officer's decision.

10. Conduct of Review. The Board of Education shall be bound by the hearing authority's factual determination unless the student persuades the Board of Education, on review, 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. A student request for review must be submitted to the Board within ten (10) school days after the student is informed of the hearing officer's decision. would manifestly change the factual determination. Upon any such finding, the Board of Education shall have discretion to receive new evidence or conduct a de novo hearing.

11. Decision. Except in extraordinary circumstances, a review will be conducted by the Board of Education no later than fifteen (15) school days after a student's written request for review is received by the Board. The Board shall prepare a written decision, including concise reasons, and shall mail or deliver the decision to the student, through the parent, within ten (10) school days after the review is concluded.

12. Effect of Board of Education's Decision on Review. The Board of Education's decision shall be the final administrative action to which a student is entitled.

See policies:

- 300 Student Attendance
- 322 Sexual Harassment
- 338 Hazing
- 339 Searches of Students
- 345 Policy Prohibiting Physical Mistreatment of Students
- 346 Gang Activity
- 347 Weapons in School
- 349 Dress

REFERENCE: 6.11.2 NMAC