

POLICY SERVICES

ADVISORY

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Policy Advisory Discussion

The following advisory information is provided in response to the enactment of The Safe Schools for All Students Act per Senate Bill 288 of the 2019 New Mexico Legislative Session effective July 1, 2019 and requiring the enforcement of the adopted policies by January 1, 2020.

THE FOLLOWING INFORMATION AND SET OF ADVISORIES MAY BE SUBJECT TO THE NEW MEXICO PUBLIC EDUCATION DEPARTMENT (PED) PROVIDING WRITTEN INTERPRETATIONS OR ADOPTING REGULATIONS (NMAC) IN THE FUTURE. HOWEVER, POLICY SERVICES FELT THAT "THE SAFE SCHOOLS FOR ALL STUDENTS ACT" (THE ACT) NEEDED TO BE INTERPRETED AND POLICIES AVAILABLE AS EARLY AS POSSIBLE IN THE SCHOOL YEAR 2019-2020 TO INSURE DISTRICTS HAVE THE OPPORTUNITY FOR COMPLIANCE BEFORE THE JANUARY DEADLINE .

Action other than policy adoption

Below you will find the points made in the e-mail from PED by Dean Hopper on August 23, 2019 relative to the Senate Bill 288. Policy Services has chosen to point out where the requirements cited are located in the new policy and to repeat the 'outside of policy activities' that will be needed to conform to Senate Bill 288.

In addition to the required policy and procedures, each school district is required to include the bullying prevention policy and procedures for reporting in student handbooks using developmentally and culturally appropriate language. Following adoption of the bullying prevention policy, each district shall establish a bullying prevention program for students that will align with the new Mexico Health Education Content Standards with Benchmarks and Performance Standards (<https://webnew.ped.state.nm.us/bureaus/safe-healthy-schools/school-health-resources/>).

Bullying prevention training shall also be incorporated into new employee training, as well as provided annually, following adoption of the local policy, to all employees and volunteers who have significant contact with students. Bullying prevention policies and the point of contact information shall be posted on the district website and updated annually.

The Act in Policy

The Act requires school districts and charter schools to adopt and enforce a policy by January 1, 2020 that:

- Prevents instances of bullying and cyberbullying on its property, at school or district sponsored events and on school sponsored transportation inclusive of electronic communication. (See page 1 of JICD.)
- Includes definitions as set forth in the Act. (See page 1 **Definitions** of JICD.)
- Includes a statement prohibiting bullying and a statement prohibiting retaliation against those who report or witness bullying. (See second paragraph under **Reporting and Investigating** in JICD.)
- Sets forth procedures for reporting bullying and for reporting instances of retaliation for reporting an act of bullying. Reports may be made orally, in the preferred language of the

reporter, anonymously, and by parents in written form. (See **Reporting and Investigation** in JICD.)

District policies should also include procedures for the prompt investigation of reported bullying, cyberbullying, and retaliation that:

- Are to be the responsibility of a school or district administrator who investigates or supervises investigation of all reports. (See **Reporting and Investigation** in JICD.)
- Include procedures for notification to parents/guardians of students alleged to have committed an act of bullying and the students targeted by the alleged act. (See Investigation in Regulation JICD-R.) School employees who witness bullying or who receive reports of bullying are required to notify the designated administrator within two calendar days. (See **Reporting and Investigation** in JICD.)
- Include an appeal process for both the student accused of bullying and the student who is the target of bullying should either be unsatisfied with the investigation outcome. (See *Appeal* in Regulation JICD-R.)
- Develop a student safety support plan for students who are identified as the targets of bullying to be developed in order to protect the students from further acts of bullying. (See paragraph 5 of **Reporting and Investigation** of Policy JICD)

The policies that follow are recommended for adoption by policy services.

Policy Advisory No. 198.....GCH - Professional Staff Orientation and Training. The addition to this policy was that orientation would include bullying prevention and reporting for new teachers and that some training would be provided to all professional staff annually as required by The Act and other laws.

Policy Advisory No. 199.....GDH - Support Staff Orientation and Training. The addition to this policy was that orientation would include bullying prevention and reporting for new support staff and volunteers and that some training would be provided to all support staff and volunteers.

Policy Advisory No. 200.....IJNDB - Use of Technology Resources In Instruction. For purposes of emphasizing the prohibition of bullying a sentence was added to this policy defining the prohibited behavior.

Policy Advisory No. 201.....JICD - Student Harassment / Bullying / Cyberbullying Prevention. Please note that the content of Policy, Regulation and Exhibit JICD has been completely reorganized because of The Safe Schools For All Students Act (The Act). First The Act repealed Section 22-2-21 NMSA 1978, which was the basis for the former Policy JICD. The Act substituted a new Section 22-35-1 et seq. NMSA 1978 with different definitions and

requirements from the repealed Section. Policy Services has used the Memo from the Public Education Department regarding The Act to provide guidance in reviewing the new policy and procedures. Districts are encouraged, however, to read the The Act prior to reading the proposed Policy, Regulation and Exhibit. Districts should note that the underlying purpose of this policy and The ACT is to try to identify and correct bullying behavior through non-punitive means that would keep the perpetrators in the school setting.

Policy Advisory No. 202.....JK - Student Discipline. Policy JK was modified only to include the citation of The Safe Schools For All Students Act. The regulation JK-R was changed, however, to add harassment, bullying or cyberbullying as prohibited activities, to incorporate the definition of of the prohibited cyberbullying activity, and to correct the content of the side heading Student Disciplinary Proceeding.

Materials of a legal nature in support of these advisories may be found below. If you have any questions or requests please call Policy Services at (505) 469-0193 or E-mail Dr. Donn Williams, Policy Services Director at [nmsbapolicy@cox.net].

This Material is written for information only and is not intended as legal advice. Please consult your attorney if legal explanations are needed.

Advisory 198

PROFESSIONAL STAFF ORIENTATION AND TRAINING

The Superintendent will establish a program to provide orientation for all new District employees. Those new staff members not present at the orientation/training will be given a program of the same or similar content on or immediately after employment by their immediate supervisor. All staff are required to participate in annual training as underlined per statute. At a minimum, the orientation and training will may cover the following items and will include all statutorily required training as determined by the Superintendent:

- Goals, objectives, and programs of the District.
- Personnel policies.
- Terms of employment.
- Disciplinary and conduct rules and procedures.
 - Annually, train staff regarding behavioral supports or behavioral management and the use of restraint and seclusion techniques.
 - Provide activities that create an awareness among staff of homeless student behaviors and direct them toward strategies and support so that out of school suspension or expulsion would be used only as a last resort.
- Bullying prevention and reporting.
- Salary and fringe-benefit plans.
- Self-improvement opportunities.
- The evaluation program and name(s) of evaluator(s).
- Handling of body fluids.
- Child abuse reporting responsibilities.

Adopted: date of manual adoption

LEGAL REF.: 22-35-1 NMSA *et seq.* NMSA
6.11.2.10 NMAC

29 U.S.C. 653

42 U.S.C. 11301, McKinney-Vento Homeless Assistance
Act of 2001, as amended by the Every Student
Succeeds Act (ESSA) of 2015

CROSS REF.:

GBEBB - Staff Conduct with Students

GBGC - Employee Assistance

JICD - Harassment / Bullying / Cyberbullying Prevention

JK - Student Discipline

JLF - Child Abuse / Child Protection

JLI - Student Safety

Advisory 199

SUPPORT STAFF ORIENTATION AND TRAINING

The Superintendent will establish a program to provide orientation for all new District employees and volunteers. Those new staff members not present at the orientation/training will be given a program of the same or similar content on or immediately after employment by their immediate supervisor. All staff are required to participate in the underlined training annually per statute. ~~At a minimum, t~~ The orientation and training will may cover the following items and will include all statutorily required training as determined by the Superintendent:

- Goals, objectives, and programs of the District.
- Personnel policies.
- Terms of employment.
- General disciplinary rules and procedures.
- Bullying prevention and reporting.
- Salary and fringe benefit plans.
- Self-improvement opportunities.
- The evaluation program and name(s) of evaluator(s).
- Handling of body fluids.

Adopted: date of manual adoption

LEGAL REF.: 22-35-1 *et seq.* NMSA
6.11.2.10 NMAC
29 U.S.C. 653
42 U.S.C. 11301, McKinney-Vento Homeless Assistance
Act of 2001, as amended by the Every Student
Succeeds Act (ESSA) of 2015

CROSS REF.: GBEBB - Staff Conduct with Students
GBGC - Employee Assistance
JICD - Harassment / Bullying / Cyberbullying Prevention

JK - Student Discipline
JLF - Child Abuse / Child Protection
JLI - Student Safety

Advisory 200

USE OF TECHNOLOGY RESOURCES IN INSTRUCTION

Appropriate Use of Electronic Information Services

The District may provide electronic information services (EIS) to qualified students, teachers, and other personnel who attend or who are employed by the District. Electronic information services include networks (e.g., LAN, WAN, Internet), databases, and any computer-accessible source of information, whether from hard drives, tapes, compact disks (CDs), floppy disks, flash drives, memory cards or other electronic sources. The use of the services shall be in support of education, research, and the educational goals of the District. To assure that the EIS is used in an appropriate manner and for the educational purposes intended, the District will require anyone who uses the EIS to receive instruction in and follow its guidelines and procedures for appropriate use. Instruction in appropriate online behavior shall include how to interact with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response. Anyone who misuses, abuses, or chooses not to follow the EIS guidelines and procedures will be denied access to the District's EIS and may be subject to disciplinary action.

Each user will be required to sign an EIS user agreement. The District may log the use of all systems and monitor all system utilization. Accounts may be closed and files may be deleted at any time. The District is not responsible for any service interruptions, changes, or consequences. The District reserves the right to establish rules and regulations as necessary for the efficient operation of the electronic information services.

The District does not assume liability for information retrieved via EIS, nor does it assume any liability for any information lost, damaged, or unavailable due to technical or other difficulties.

Web and Internet Publishing

Documents created for the Web must have a purpose that falls within at least one of the following two categories: (1) Support of curriculum, instruction, and learning, and (2) Communication with parents and the community.

All information must accurately reflect the mission, goals, policies, program, and activities of the School District. All subject matter should relate to curriculum, instruction, and general information that is appropriate, or it should relate to activities of the District or the schools within the District.

Filtering and Internet Safety

The District shall provide for technology protection measures that protect against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by students, harmful to students. The protective measures shall also include monitoring the online activities of students.

Limits, controls, and prohibitions shall be placed on student:

- Access to inappropriate matter.
- Safety and security in direct electronic communications.
- Unauthorized online access or activities.
- Unauthorized disclosure, use and dissemination of personal information.

Electronic communication directed at a student, that is published with the intent that it be seen by or disclosed to that student and that substantially interferes with the student's ability to participate in or benefit from the services, activities or privileges provided by the public school are prohibited.

The Superintendent is responsible for establishing and enforcing the District's electronic information services guidelines and procedures for appropriate technology protection measures (filters), monitoring, and use.

Adopted: date of manual adoption

LEGAL REF.: 22-35-1 *et seq.* NMSA
20 U.S.C. 9134, The Children's Internet Protection Act
47 U.S.C. 254, Communications Act of 1934 (The Children's
Internet Protection Act)

CROSS REF.: EGD - Use of Technology in Office Services

Advisory 201

**STUDENT HARASSMENT / BULLYING /
CYBERBULLYING PREVENTION**

Harassment, bullying and cyberbullying are prohibited on school property:

- including electronic communication on or with the use of its property;
- at sponsored functions; and
- on its to-and-from-school transportation or transportation by the District to or from any school-sponsored event.

Electronic communication is prohibited if it is:

- directed at a student,
- published with the intent that it be seen by or disclosed to that student and others, and
- substantially interferes with the student's ability to participate in or benefit from the services, activities or privileges provided by the public school.

Anti-bullying and prevention shall be included as a part of the health education curriculum as set forth in the New Mexico Administrative Code and incorporated annually in the instruction for all students.

Definitions for purposes of this policy:

- "Harassment" means knowingly pursuing a pattern of conduct that is intended to annoy, alarm or terrorize another person.
- "Bullying" means any severe, pervasive or persistent act or conduct that targets a student, whether physically, electronically or verbally, and that:
 - may be based on a student's actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or cognitive disability or any other distinguishing characteristic; or on an association with a person, or group with any person, with one or more of the actual or perceived distinguishing characteristics; and
 - can be reasonably predicted to:

- ▲ place a student in reasonable fear of physical harm to the student's person or property;
 - ▲ cause a substantial detrimental effect on a student's physical or mental health;
 - ▲ substantially interfere with a student's academic performance or attendance; or
 - ▲ substantially interfere with a student's ability to participate in or benefit from the services, activities or privileges provided by an agency, educational institution or grantee.
- "Cyberbullying" means any bullying that takes place through electronic communication.
- "Electronic communication" means a communication transmitted by means of an electronic device, including a telephone, cellular phone, computer, electronic tablet, pager or video or audio recording.
- "Gender identity" means a student's self-perception, or perception of that student by another, of the student's identity as a male or female based upon the student's appearance, behavior or physical characteristics that are in accord with or opposed to the student's physical anatomy, chromosomal sex or sex at birth.
- "Local school board" includes the governing body of a charter school.
- "Physical or cognitive disability" means a physical or cognitive impairment that substantially limits one or more of a student's major life activities.
- "Progressive discipline" means disciplinary action, other than suspension or expulsion from school, that is designed to correct and address the basic causes of a student's specific misbehavior while retaining the student in class or in school, or restorative school practices to repair the harm done to relationships and other students from the student's misbehavior, and may include:
 - meeting with the student and the student's parents;
 - reflective activities, such as requiring the student to write an essay about the student's misbehavior;
 - counseling;
 - anger management;
 - health counseling or intervention;

- mental health counseling;
 - participation in skill-building and resolution activities, such as social-emotional cognitive skills building, resolution circles and restorative conferencing;
 - community service; and
 - in-school detention or suspension, which may take place during lunchtime, after school or during weekends.
- "Sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived."

Reporting and Investigation

School employees and volunteers having significant contact with students shall complete training on how to recognize signs that a person is being harassed, bullied or cyberbullied and shall be responsible for reading and understanding this policy.

Any student, parent or person may report an allegation of bullying by contacting a school employee with information that will allow the administration to contact those who may be involved. A school employee who has information about or a reasonable suspicion that a person is being harassed, bullied or cyberbullied shall report immediately to the school principal, an administrator, the superintendent or any of these school officers. Retaliation for witnessing or reporting bullying is prohibited and the person initiating such retaliation is subject to disciplinary action. Reports of retaliation shall be made in the same manner as those for bullying.

The employee shall elicit from a student, parent or person the particulars determined by the Superintendent to be necessary for the allegation to be investigated. When the allegation is submitted in a manner other than on a prescribed form, the particulars of the allegation must be written on the form as immediately as possible after receipt by the employee. The employee may assist the student, parent or person in completing the information form or may enter the information needed from any provided verbal or other source. A student, parent or person making an allegation should sign and date the information provided, however, unsigned forms are to be processed in the same manner as signed forms. No formal disciplinary measures may be taken based solely upon an anonymously submitted complaint. A school staff member, support staff member or volunteer shall report behavior that falls within this policy, on the forms provided, upon becoming aware of such behavior.

When the school staff member receiving the information or observing the act is other than a school administrator, it shall be the responsibility of the staff member to inform a school administrator as soon as feasible, but not later than two (2) days after the staff member receives or observes the allegation of bullying. If a school administrator is included in the

allegation, the information shall be transmitted to the next higher administrative supervisor. A failure by the school staff member to timely inform the school administrator or next higher administrative supervisor of the allegation may subject the staff member to disciplinary action. The professional staff member shall preserve the confidentiality of the subject, disclosing it only to the appropriate school administrator or next higher administrative supervisor or as otherwise required by law.

The Superintendent shall designate a school administrator at each campus to investigate all reports of bullying and shall supervise the investigation of all reports of bullying. Any school administrator who receives a report of harassment, bullying, or cyberbullying shall take immediate steps to ensure a prompt investigation of the report and shall take prompt action in response to these acts upon confirmation of the occurrence through such investigation. Such action may include the least restrictive means necessary to address a hostile environment resulting from harassment, bullying or cyberbullying that may include:

- counseling;
- mediation;
- development of a student safety support plan for protection of the targeted student;
- discipline up to but not including expulsion (see "progressive discipline" in **Definitions** above).

Where disciplinary action is necessary, District policies and regulations pertaining to permissible penalties and procedures shall be followed as in policy. Reference policy JK for implementation of permissible penalties within the context of progressive discipline referent to all of the surrounding circumstances including:

- the nature of the incident;
- the developmental age of the student who is bullying as well as the student who has been bullied; and
- any history of problem behavior from the student who is bullying.

The district shall document reports and investigations of bullying by school and shall maintain those records for no less than four years making such reports as shall be necessary to both state and federal authorities.

To assure that students and staff are aware of its content and intent, a notice of this policy and procedure shall be:

- posted conspicuously in each school building;

- made a part of the student handbook in such form and such language as may provide the best understanding for the student and parent population ; and
- posted on the district web site.

Forms for submitting complaints are to be available to students, parents, other persons, and staff in the school offices.

Reports or investigative information relative to harassment, bullying and cyberbullying shall be maintained by staff and the District and shared only in accord with the Family Education Rights and Privacy Act and conforming District discipline and conduct policies. Records of investigation and reported information sufficient to meet both state and federal reporting requirements on these topics shall be maintained.

Adopted: date of manual adoption

LEGAL REF.: 22-35-1 *et seq.* NMSA
 28-1-2 *et seq.* NMSA
 6.12.7.8 NMAC
 6.29.6.8 NMAC

CROSS REF.: AC - Nondiscrimination/Equal Opportunity
 ACA - Sexual Harassment
 IJNDB - Use of Technology Resources in Instruction
 JB - Equal Educational Opportunities
 JIC - Student Conduct
 JII - Student Concerns, Complaints, and Grievances
 JK - Student Discipline
 JKD - Student Suspension/Expulsion
 JR - Student Records
 KE - Public Concerns and Complaints

REGULATION**REGULATION****STUDENT HARASSMENT / BULLYING
CYBERBULLYING PREVENTION**

Procedures When a school staff member receives the information regarding a suspected bullying offense, the staff member will transmit it to the school administrator not later than two (2) days following the day the staff member receives the information or observes the incident. If the incident involves the school administrator, the professional staff member shall forward the information to the next administrative level.

At a minimum, the school employee shall provide the identifying information on the suspected bullying offense in writing and with such specificity of names, places and times as to permit an investigation to be carried out by the administration. The written suspected bullying offense report should be signed by the person providing the information and the school employee. However, an anonymous report will be processed in the same manner as a signed form but no formal disciplinary measures may be taken based solely on the anonymous submission.

The staff member reporting the suspected offense shall preserve the confidentiality of the subjects, disclosing names only to the appropriate school administrator or next higher administrative supervisor, or as otherwise required. A failure by the staff member to timely inform the school administrator or next higher administrative supervisor of the allegation may subject the staff member to disciplinary action.

Investigation The incident will be investigated by the designated school administrator. Confidentiality of records and student information shall be observed in the process. The procedures to be followed are:

- An investigation of the reported suspected offense or activity shall be made within five (5) school days of the date of the report when school is in session or within fifteen (15) days during which the school offices are open for business when school is not in session. Extension of the time line may only be by necessity as determined by the Superintendent.
- The investigator shall prepare a written report of the findings and a copy of the report shall be provided to the Superintendent.
- The investigator shall initiate appropriate action pursuant to the investigation to safeguard the welfare of the targeted student and circumscribe any further actions by the perpetrator through proper disciplinary or informal means.

- The investigator shall meet with the student and parent of the student who is the target of the suspected offense at or before the end of the time period and shall discuss the conclusions and actions to be taken as a result of the investigation. Confidentiality of records and student information shall be observed in the discussion. If the investigating administrator believes from information gathered in his professional capacity that notifying the parents would endanger the health or well-being of the student, notification may be delayed as appropriate. Such action shall include:
 - notifying the parent telephonically, by e-mail, or in writing by mail or personal service;
 - providing the date, time and place for a meeting to be held with the student, parent and administrator;
 - identifying appropriate specialized supports needed to help the student; and
 - enlisting the parents' support in preventing further bullying.
- The investigator shall contact the parents of the student alleged to have committed the act as soon as possible to seek cooperation in alleviating the suspected bullying. Confidentiality of records and student information shall be observed in the process of making such contact. Such action shall include:
 - notify the parent telephonically, by e-mail, or in writing by mail or personal service;
 - providing the date, time and place for a meeting to be held with the parent and administrator;
 - Identifying appropriate specialized supports needed to help the student address the underlying causes of the actions with the parents;
 - establishing nonpunitive consequences for the student at the school level, if possible, considering the circumstances; and
 - apprising the student and the parent of the consequences of violations of student rules of conduct.

Appeal Upon conclusion of the investigation should either the student accused of bullying or the target of the bullying take exception to the outcome of the investigation, an appeal may be made to the Superintendent of schools in writing. The Superintendent will review the actions taken based upon the application of appropriate school policy and procedure. The Superintendent will review the report and procedures and may refer the actions for further consideration, affirm the action or make such changes as may be in accord with current policy and procedure. The determination of the Superintendent is final.

Where disciplinary action is necessary, District policies and regulations pertaining to permissible penalties and procedures shall be followed as in policy JIC, JK and JKD..

The district shall document reports and investigations of bullying by each school and shall maintain those records for no less than four years making such reports as may be required to the state and federal authorities.

EXHIBIT **EXHIBIT**

**STUDENT HARASSMENT / BULLYING
CYBERBULLYING PREVENTION**

(To be filed with the school administrator, the administrator's supervisor,
or with the Superintendent)

Additional pages may be attached if more space is needed.

Targeted Student Name: _____ Date:

Grade : _____

Person or Persons alleged to be harassing, bullying, or
cyberbullying:

Specify the suspected offense by stating the problem as you see it. Describe the incident, the participants, the background to the incident, and any attempts you have made to solve the problem. Be sure to note relevant dates, times, people, and places.

Date of the of the incident or offense(s): _____

Provide what you would expect as an outcome to the incident reported.

If there is anyone who could provide more information regarding this, please list name(s), address(es), and telephone number(s).

Name

Address

Telephone Number

I certify that this information is correct to the best of my knowledge.

Signature of Student/Parent/Other Person

Date Signed

Staff Member
Receiving Complaint

Date Received

Signature of Investigating Administrator

Date Signed

The investigating administrator shall give one (1) copy to the Superintendent and retain one (1) copy for the file.

Advisory 202

STUDENT DISCIPLINE

Parents, school personnel and students shall be involved in the development of policies, and public hearings before the Board shall be held during the formulation of these policies in the high school attendance areas within each district or on a district-wide basis for those districts that have no high school. The Superintendent shall prepare and recommend the final format of discipline policies and develop procedures for the discipline of students that comply with state laws and regulations. These policies and procedures will apply to all students traveling to, attending, and returning from school, and while visiting another school or at a school-sanctioned activity and may be imposed if the student's behavior affects the school order. When suspension or expulsion is involved, notice, hearing, and appeal procedures shall conform to applicable legal requirements.

Information concerning a student's disciplinary record will be held in the strictest confidence.

Disciplinary actions taken will be recorded in an administrative log, and all types of suspensions or expulsions will be recorded in a separate file for each student.

Adopted: date of manual adoption

LEGAL REF.: 22-35-3 NMSA (1978)
22-5-4.3 NMSA (1978)
6.11.2.7 NMAC
6.11.2.8 NMAC
6.11.2.9 NMAC
6.11.2.10 NMAC
6.11.2.11 NMAC
6.11.2.12 NMAC

CROSS REF.: JIC - Student Conduct
JKA - Corporal Punishment
JKD - Student Suspension/Expulsion
JR - Student Records

REGULATION**REGULATION****STUDENT DISCIPLINE**

The following are prohibited activities:

- Criminal or delinquent acts;
- Gang related activity;
- Sexual harassment
- Disruptive conduct;
- Refusal to identify self; and
- Refusal to cooperate with school personnel; and,
- Harassment, bullying or cyberbullying

A student may be subject to disciplinary action when the student engages in the above or those below:

- Engages in conduct that is disorderly, i.e., intentionally causing public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, by:
 - Fighting or engaging in violent behavior.
 - Making unreasonable noise.
 - Using abusive or obscene language or gestures.
 - Obstructing vehicular or pedestrian traffic.
 - Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.
- Engages in conduct that is insubordinate, i.e., failing to comply with the lawful directions of a teacher, school administrator, or other school employee in charge of the student.
- Endangers the safety, morals, health, or welfare of others by any act, including but not limited to:

- Selling, distributing, using, or possessing alcohol, drugs, or other controlled substances or drug paraphernalia;
 - Selling, distributing, using, or possessing weapons, fireworks, or other dangerous instruments or contraband;
 - Selling, using, or possessing obscene materials;
 - Using profane, vulgar, or abusive language (including ethnic slurs);
 - Gambling;
 - Hazing;
 - Engaging in lewd behavior;
 - Engaging in harassing, cyberbullying or bullying of another student.
- Engages in any of the following forms of academic misconduct:
 - Lateness for, missing, or leaving school or class without permission or excuse;
 - Cheating (including but not limited to copying, using unauthorized assistance in any form help sheets and the like, illegally obtaining tests in advance, substituting for a test-taker, and other forms of unauthorized collusion);
 - Plagiarism.
 - Engages in conduct violative of the Board's rules and regulations for the maintenance of public order on school property.
 - Uses electronic communication directed at a student, that is published with the intent that it be seen by or disclosed to that student and that substantially interferes with the student's ability to participate in or benefit from the services, activities or privileges provided by the public school.
 - Has a record of excessive absenteeism.
 - Is believed to have or actually has committed a crime.

Reasonableness of use of physical force in self-defense, defense of others, and defense of property will be considered as a mitigating factor in determining penalties for misconduct. The threat or use of physical force by a student is not reasonable (i) when made in response to verbal provocation alone, (ii) when assistance from a school staff member is a reasonable alternative, or (iii) when the degree of physical force used is disproportionate to the

circumstances or exceeds that necessary to avoid injury to oneself or to others or to preserve property at risk.

Permissible Penalties

The range of penalties that may be imposed for violations of student discipline rules include, but are not limited to, the following:

- Parent-student disciplinary conference.
- Directed reflective activities.
- Anger management training referral.
- Verbal warning.
- Written warning.
- Written notification to parents.
- Probation.
- Detention.
- Suspension from transportation.
- Suspension from athletic participation.
- Suspension from social or extracurricular activities.
- Suspension of other privileges.
- Exclusion from a particular class.
- In-school suspension.
- Involuntary transfer.
- Community service.
- Suspension.
- Expulsion.

Depending upon the nature of the violation, and the surrounding circumstances, student discipline may be progressive, i.e., generally, a student's first violation should merit a lighter penalty than subsequent violations. A District employee or agent should take into account all

other relevant factors in determining an appropriate penalty. The above penalties may be imposed either alone or in combination.

Student Disciplinary Proceeding

Any ~~teacher, administrator, Board member, parent,~~ student or other person may report a violation of student disciplinary rules to ~~a~~ school staff member or administrator. The employee will then report this to an administrator who ~~The administrator~~ will then make an investigation of the charges as deemed appropriate and will institute appropriate proceedings.

This information for the maintenance of public order on school property will be publicized on the district web site, in student handbooks and explained to all students and provided in writing to parents as requested. In order to promote effectiveness of student discipline, the assistance of parents in enforcing rules for student discipline shall be invited and encouraged.

Involving Staff Members

The principal is responsible for involving staff members of the school in the development of a positive plan for student discipline. All staff members are responsible for implementing the plan of student discipline for the school.

RELEVANT STATUES, RULES AND CITATIONS

Please be aware that the formatting on the citation is not as intended by the Compilation Commission web site because of the method of transfer. You may find the citation at <https://nmonesource.com/nmos/en/nav.do> , enter 22-35-1

22-35-1. Short title.

This act [22-35-1 through 22-35-5 NMSA 1978] may be cited as the "Safe Schools for All Students Act".

History: Laws 2019, ch. 181, § 1.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 181, § 7 made Laws 2019, ch. 181 effective July 1, 2019.

22-35-2. Definitions.

As used in the Safe Schools for All Students Act:

A. "bullying" means any severe, pervasive or persistent act or conduct that targets a student, whether physically, electronically or verbally, and that:

(1) may be based on a student's actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation, physical or cognitive disability or any other distinguishing characteristic; or on an association with a person, or group with any person, with one or more of the actual or perceived distinguishing characteristics; and

(2) can be reasonably predicted to:

(a) place a student in reasonable fear of physical harm to the student's person or property;

(b) cause a substantial detrimental effect on a student's physical or mental health;

(c) substantially interfere with a student's academic performance or attendance; or

(d) substantially interfere with a student's ability to participate in or benefit from the services, activities or privileges provided by an agency, educational institution or grantee;

B. "cyberbullying" means any bullying that takes place through electronic communication;

C. "electronic communication" means a communication transmitted by means of an electronic device, including a telephone, cellular phone, computer, electronic tablet, pager or video or audio recording;

D. "gender identity" means a student's self-perception, or perception of that student by another, of the student's identity as a male or female based upon the student's appearance, behavior or physical characteristics that are in accord with or opposed to the student's physical anatomy, chromosomal sex or sex at birth;

- E. "local school board" includes the governing body of a charter school;
- F. "physical or cognitive disability" means a physical or cognitive impairment that substantially limits one or more of a student's major life activities;
- G. "progressive discipline" means disciplinary action other than suspension or expulsion from school that is designed to correct and address the basic causes of a student's specific misbehavior while retaining the student in class or in school, or restorative school practices to repair the harm done to relationships and other students from the student's misbehavior, and may include:
- (1) meeting with the student and the student's parents;
 - (2) reflective activities, such as requiring the student to write an essay about the student's misbehavior;
 - (3) counseling;
 - (4) anger management;
 - (5) health counseling or intervention;
 - (6) mental health counseling;
 - (7) participation in skill-building and resolution activities, such as social-emotional cognitive skills building, resolution circles and restorative conferencing;
 - (8) community service; and
 - (9) in-school detention or suspension, which may take place during lunchtime, after school or during weekends; and
- H. "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

History: [Laws 2019, ch. 181, § 2.](#)

ANNOTATIONS

Effective dates. — [Laws 2019, ch. 181, § 7](#) made Laws 2019, ch. 181 effective July 1, 2019.

22-35-3. Bullying prevention policies; adoption and enforcement.

- A. By January 1, 2020, each local school board shall adopt and enforce policies to:
- (1) prevent bullying:
 - (a) on its property, including electronic communication on or with the use of its property;
 - (b) at sponsored functions; and
 - (c) on its to-and-from-school transportation or any school-sponsored transportation; and
 - (2) prohibit electronic communication directed at a student, that is published with the intent that it be seen by or disclosed to that student and that substantially interferes with the student's ability to participate in or benefit from the services, activities or privileges provided by the public school.

B. Each local school board shall control the content of its policy; provided that the policy includes:

- (1) the definitions as set forth in the Safe Schools for All Students Act;
- (2) a statement prohibiting bullying;
- (3) a statement prohibiting retaliation against persons who report or witness incidents of bullying;
- (4) a list of consequences, including progressive discipline approaches that can result from an identified incident of bullying that are designed to:
 - (a) appropriately correct the bullying behavior;
 - (b) prevent another occurrence of bullying or retaliation;
 - (c) protect the target of the bullying;
 - (d) be flexible so that, in application, the consequences can be unique to the individual incident and varied in method and severity based on: 1) the nature of the incident; 2) the developmental age of the student who is bullying; and 3) any history of problem behavior from the student who is bullying; and
 - (e) for cyberbullying incidents, use the least restrictive means necessary to address the interference with the student's ability to participate in or benefit from the services, activities or privileges provided by the school;
- (5) a procedure for reporting bullying or retaliation for reporting an act of bullying, including:
 - (a) a flexible reporting system that allows for reporting orally and in the student's preferred language;
 - (b) a method for reporting bullying anonymously; provided that no formal disciplinary measures shall be taken solely on the basis of an anonymous report; and
 - (c) a method for parents to file written reports of suspected bullying; and
- (6) a procedure for prompt investigation of reports of violations of the policy and of complaints of bullying or retaliation, including:
 - (a) designation of a school administrator to investigate or supervise the investigation of all reports of bullying and to ensure that such investigation is completed promptly after the receipt of any report made under the Safe Schools for All Students Act;
 - (b) a procedure for notification of the parents of the student alleged to have committed an act of bullying and the parents of the students targeted by the alleged act; provided that if the administrator believes, in the administrator's professional capacity, that notifying the parents would endanger the health or well-being of a student, the administrator may delay such notification as appropriate;
 - (c) a benchmark that school employees who witness acts of bullying or receive reports of bullying notify the designated administrator not later than two days after the school employee witnesses or receives a report of bullying;

(d) an appeal process for a student accused of bullying or a student who is the target of bullying who is not satisfied with the outcome of the initial investigation; and

(e) development of a student safety support plan for students who are targets of bullying that addresses safety measures the school will take to protect targeted students against further acts of bullying.

C. Each local school board shall include bullying prevention policies and procedures for reporting bullying in student handbooks using developmentally and culturally appropriate language. Policies shall be produced and disseminated in appropriate languages for any school district in which a substantial portion of the student population speaks a language other than English at home.

D. Each public school shall document reports and investigations of bullying and shall maintain those records for no less than four years.

E. Each local school board shall establish procedures for public schools to report aggregate incidents of bullying and incidents of harassment under any applicable federal or state law, along with responses to these incidents, and report this information annually to the department.

History: [Laws 2019, ch. 181, § 3.](#)

ANNOTATIONS

Effective dates. — [Laws 2019, ch. 181, § 7](#) made Laws 2019, ch. 181 effective July 1, 2019.

22-35-4. Bullying prevention programs establishment.

A. Following adoption of a bullying prevention policy, each public school shall:

- (1) establish an annual bullying prevention program for students included in New Mexico's health education content standards with benchmarks and performance standards;
- (2) provide annual training on bullying prevention to all employees and volunteers who have significant contact with students; and
- (3) incorporate information on the bullying prevention policy into new employee training.

B. Each school district and public school shall develop a plan for the way in which the policy is to be publicized, including:

- (1) making each school district's anti-bullying policy, and developmentally, culturally and linguistically appropriate variants of the policy, available on public websites;
- (2) identifying a point of contact for bullying-related concerns; and
- (3) informing parents and students about the policy at least annually through student handbooks and other resources.

History: [Laws 2019, ch. 181, § 4.](#)

ANNOTATIONS

Effective dates. — [Laws 2019, ch. 181, § 7](#) made Laws 2019, ch. 181 effective July 1, 2019.

22-35-5. Department duties; school district and charter school report cards.

A. The department shall:

- (1) issue guidance for bullying prevention programs and policies in accordance with the Safe Schools for All Students Act; and
- (2) within one hundred twenty days of the effective date of the Safe Schools for All Students Act:
 - (a) promulgate rules for a model policy for local school boards on bullying prevention in accordance with that act, as well as any developmentally, culturally or linguistically appropriate variants of the policy;
 - (b) provide guidance to local school boards relating to effective forms of progressive discipline to reduce bullying and school violence; and
 - (c) provide guidance to local school boards on effective bullying prevention programs to reduce bullying and school violence.

B. At the same time as or as part of the annual accountability report, each school district and charter school shall report on the status of its implementation of the provisions of the Safe Schools for All Students Act, including the aggregate number of incidents of bullying in the state, the aggregate number of incidents of harassment under any applicable federal or state laws, the aggregate number of responsive actions taken by public schools by type of action, a tabulation of the number of incidents associated with each distinguishing characteristic defined in the Safe Schools for All Students Act, the department's evaluation of the sufficiency of funding for bullying prevention programs and any recommendations for policy or programmatic change to improve the addressing of bullying issues in the state.

History: [Laws 2019, ch. 181, § 5.](#)

ANNOTATIONS

Effective dates. — [Laws 2019, ch. 181, § 7](#) made [Laws 2019, ch. 181](#) effective July 1, 2019.

