

# CAPITAN MUNICIPAL SCHOOLS BOARD OF EDUCATION

## SECTION G PERSONNEL

	Table of Contents	Page Number
<b>G.1</b>	<b>Personnel Goals/Priority Objectives .....</b>	<b>6</b>
<b>G.2</b>	<b>General Personnel Policy .....</b>	<b>6</b>
<b>G.2.1</b>	<b>Classification of Employees .....</b>	<b>6</b>
<b>G.2.2</b>	<b>Equal Employment Opportunity .....</b>	<b>7</b>
<b>G.2.2-A</b>	<b>Compliance Officer .....</b>	<b>7</b>
<b>G.2.2-B</b>	<b>Complaint Procedure .....</b>	<b>7</b>
<b>G.2.2-C</b>	<b>Timelines .....</b>	<b>7</b>
<b>G.2.3</b>	<b>Staff Involvement in Decision Making/Professional Organizations .....</b>	<b>8</b>
<b>G.2.3.1</b>	<b>Participation in Professional Organizations.....</b>	<b>8</b>
<b>G.2.3.2</b>	<b>Recognition of Capitan Association of Classroom Teachers .....</b>	<b>8</b>
<b>G.2.4</b>	<b>Statement of Ethics for School Employees .....</b>	<b>8</b>
<b>G.2.5</b>	<b>Staff Conflict of Interest .....</b>	<b>10</b>
<b>G.2.5.A</b>	<b>Nepotism .....</b>	<b>10</b>
<b>G.2.5.B</b>	<b>Prohibited Acts .....</b>	<b>11</b>
<b>G.2.5.C</b>	<b>Vendor Relations .....</b>	<b>11</b>
<b>G.2.6</b>	<b>Standards of Professional Conduct.....</b>	<b>11</b>
<b>G.2.7</b>	<b>Staff Conduct .....</b>	<b>16</b>
<b>G.2.8</b>	<b>Staff Conduct with Students .....</b>	<b>17</b>
<b>G.2.9</b>	<b>Gifts to Staff Members .....</b>	<b>18</b>
<b>G.2.10</b>	<b>Solicitations by Staff Members.....</b>	<b>18</b>
<b>G.2.11</b>	<b>Drug-Free Workplace .....</b>	<b>19</b>
<b>G.2.11-A</b>	<b>Definition .....</b>	<b>19</b>
<b>G.2.11-B</b>	<b>Non-Medical Use or Abuse of Drugs or Alcohol .....</b>	<b>20</b>
<b>G.2.11-C</b>	<b>Enforcement of Policy .....</b>	<b>21</b>
<b>G.2.11-D</b>	<b>Convictions .....</b>	<b>21</b>
<b>G.2.11-E</b>	<b>Distribution and Maintenance of Policy .....</b>	<b>22</b>
<b>G.2.12</b>	<b>Tobacco Free Campus .....</b>	<b>22</b>

<b>G.2.13</b>	<b>Staff Personal Security and Safety</b> .....	<b>22</b>
<b>G.2.13-A</b>	Violence .....	<b>22</b>
<b>G.2.13-B</b>	Threats .....	<b>23</b>
<b>G.2.14</b>	<b>Employee Assistance</b> .....	<b>23</b>
<b>G.2.15</b>	<b>Bloodborne Pathogen - Exposure Control</b> .....	<b>23</b>
<b>G.2.15-A</b>	Exposure Determination .....	<b>23</b>
<b>G.2.15-B</b>	Work Practice Control .....	<b>24</b>
<b>G.2.15-C</b>	Personal Protection Equipment.....	<b>24</b>
<b>G.2.15-D</b>	Housekeeping .....	<b>25</b>
<b>G.2.15-E</b>	Hepatitis B Vaccination .....	<b>25</b>
<b>G.2.15-F</b>	Post-exposure Evaluation .....	<b>25</b>
<b>G.2.15-G</b>	Information Provided to/from the Health Care Professional .....	<b>26</b>
<b>G.2.15-H</b>	Information and Training .....	<b>26</b>
<b>G.2.15-I</b>	Medical Records .....	<b>26</b>
<b>G.2.15-J</b>	Availability and Transfer of Records.....	<b>27</b>
<b>G.2.16</b>	<b>Wellness/Communicable Diseases</b> .....	<b>27</b>
<b>G.2.16-A</b>	Medical Examinations .....	<b>28</b>
<b>G.2.16-B</b>	Food Service Workers .....	<b>28</b>
<b>G.2.16-C</b>	HIV / AIDS .....	<b>28</b>
<b>G.2.16-D</b>	Protective Precautions .....	<b>29</b>
<b>G.2.17</b>	<b>Workers Compensation</b> .....	<b>29</b>
<b>G.2.17-A</b>	Compensation Claims .....	<b>29</b>
<b>G.2.17-B</b>	Early Return to Work .....	<b>30</b>
<b>G.2.18</b>	<b>Staff Participation in Political Activities</b> .....	<b>30</b>
<b>G.2.19</b>	<b>Personnel Records and Files</b> .....	<b>31</b>
<b>G.2.19-A</b>	Access to Personnel Records .....	<b>31</b>
<b>G.2.19-B</b>	Employee Review of Personal Records .....	<b>32</b>
<b>G.2.20</b>	<b>Employment Recommendations</b> .....	<b>32</b>
<b>G.2.20-A</b>	Rules for providing Employment References and Recommendations .....	<b>32</b>
<b>G.2.20-B</b>	Investigation and Record-Keeping.....	<b>33</b>
<b>G.2.20-C</b>	Penalties .....	<b>33</b>
<b>G.2.21</b>	<b>Staff Grievances</b> .....	<b>33</b>
<b>G.2.21-A</b>	Definition and Limitations .....	<b>33</b>
<b>G.2.21-B</b>	General Requirements .....	<b>34</b>
<b>G.2.21-C</b>	Procedural Steps .....	<b>35</b>
<b>G.2.22-D</b>	Conducting of Grievances Hearing by the Board of Education.....	<b>36</b>
<b>G.3.0</b>	<b>Professional Staff Position</b> .....	<b>37</b>
<b>G.3.1</b>	<b>Professional Staff Contracts and Compensation</b> .....	<b>37</b>
<b>G.3.2</b>	<b>Professional Staff Salary System</b> .....	<b>38</b>

G.3.2-A	Credit for Teaching Experience .....	38
G.3.2-B	Credit for Military Service .....	38
G.3.2-C	Credit for Course Work and Licensure Advancement.....	38
<b>G.3.3</b>	<b>Professional Staff Supplement Pay/Extra Duty .....</b>	<b>39</b>
<b>G.3.4</b>	<b>Professional Staff Fringe Benefits .....</b>	<b>39</b>
<b>G.3.5</b>	<b>Official Business Leave for Certified and Support Staff .....</b>	<b>39</b>
G.3.5-A	Official Business Leave .....	39
G.3.5-B	Professional Education Association Leave .....	40
<b>G.3.6</b>	<b>Leave for Certified and Support Staff.....</b>	<b>40</b>
G.3.6-A	Accumulative of Leave .....	41
G.3.6-B	Use of Leave .....	41
G.3.6-C	Educational Leave .....	41
G.3.6-D	Compensation for Accumulated Leave/Longevity Incentive .....	41
<b>G.3.7</b>	<b>Absent without Leave .....</b>	<b>42</b>
<b>G.3.8</b>	<b>Professional/Support Staff Leave Without Pay .....</b>	<b>42</b>
<b>G.3.9</b>	<b>Family and Medical Leave Act.....</b>	<b>43</b>
G.3.9-A	Special Conditions .....	44
G.3.9-B	Notice .....	45
G.3.9-C	Certification .....	45
G.3.9-D	Intermittent or Reduced Time Leave .....	46
G.3.9-E	Special End of Semester Circumstances for Instructional Employees .....	47
G.3.9-F	Employee Notification .....	47
G.3.9-G	Health Care Continuation .....	47
G.3.9-H	Position Restoration .....	48
<b>G.3.10</b>	<b>Sick Leave Bank .....</b>	<b>48</b>
G.3.10-A	Rules and Regulations for Sick Leave Bank.....	48
<b>G.3.11</b>	<b>Other Leave .....</b>	<b>50</b>
G.3.11-A	Court Leave / Jury Duty .....	50
G.3.11-B	Military Leave .....	50
G.3.11-C	Inclement Weather Absence .....	50
<b>G.3.12</b>	<b>Staff Vacations and Holidays Employees .....</b>	<b>51</b>
<b>G.4</b>	<b>Posting of Vacancies .....</b>	<b>52</b>
<b>G.4.1</b>	<b>Hiring of Professional Staff .....</b>	<b>52</b>
<b>G.4.2</b>	<b>Fingerprinting Requirements .....</b>	<b>53</b>
<b>G.4.3</b>	<b>Temporary Instructional Personnel / Substitute Teachers.....</b>	<b>54</b>
G.4.3-A	Qualifications for Substitute Licensure and Employment .....	54
G.4.3-B	Compensation of Substitute Teachers.....	54

G.4.3-C	Selection of Substitute Teachers .....	55
G.4.3-D	Exceptions .....	55
<b>G.4.4</b>	<b>Professional Staff Orientation and Training.....</b>	<b>55</b>
<b>G.4.5</b>	<b>Professional Staff Development.....</b>	<b>55</b>
<b>G.4.6</b>	<b>Professional Staff Schedules .....</b>	<b>56</b>
<b>G.4.7</b>	<b>Professional Staff Meetings .....</b>	<b>56</b>
<b>G.4.8</b>	<b>Evaluations of Licensed Staff .....</b>	<b>57</b>
<b>G.4.9</b>	<b>Evaluation of Principal .....</b>	<b>57</b>
<b>G.5.0</b>	<b>Resignation of Professional Staff Members .....</b>	<b>57</b>
<b>G.5.1</b>	<b>Reduction in Force (RIF) of Professional Staff Member .....</b>	<b>58</b>
G.5.1-A	Situations Justifying Reduction In Force .....	58
G.5.1-B	Timing of Reduction In Force .....	59
G.5.1-C	Preparation for Reduction In Force.....	59
<b>G.5.2</b>	<b>Discipline of Professional Staff Members.....</b>	<b>60</b>
G.5.2-A	Definitions .....	60
G.5.2-B	Infractions Warranting Discipline .....	60
G.5.2-C	General Provisions for Discipline.....	61
<b>G.5.3</b>	<b>Minor Discipline .....</b>	<b>61</b>
G.5.3-A	Minor Discipline Hearing .....	61
G.5.3-B	Appeal of Minor Discipline .....	62
<b>G.5.4</b>	<b>Termination Pursuant to 22-10A-25 NMSA (1978).....</b>	<b>63</b>
G.5.4-A	Termination Procedural Steps.....	63
G.5.4-B	Appeal Requirement and Content.....	64
G.5.4-C	Appeal Hearing Procedure .....	64
G.5.4-D	Termination Arbitration Appeal.....	64
G.5.4-E	Arbitration Hearing Procedure.....	65
<b>G.5.5</b>	<b>Discharge per 22-10A-27 NMSA (1978) .....</b>	<b>66</b>
G.5.5-A	Discharge Hearing Procedure .....	67
G.5.5-B	Discharge Arbitration Appeal .....	67
G.5.5-C	Arbitration Hearing Procedure.....	68
<b>G.5.6</b>	<b>Additional Provisions /Conditions for Discipline of Professional Staff Members.....</b>	<b>68</b>
<b>G.5.7</b>	<b>Discipline Reporting Requirements .....</b>	<b>69</b>
G.5.7-A	Reporting for Violating Standards of Professional Conduct .....	69
G.5.7-B	Reporting for Ethical Misconduct.....	69
<b>G.6.0</b>	<b>Outside Employment of Professional Staff Members .....</b>	<b>69</b>

<b>G.6.1</b>	<b>Tutoring for Pay</b>	.....	<b>70</b>
<b>G.6.2</b>	<b>Professional Research and Publishing</b>	.....	<b>70</b>
<b>G.7.0</b>	<b>Support Staff Positions</b>	.....	<b>70</b>
<b>G.7.1</b>	<b>Support Staff Contracts and Compensation</b>	.....	<b>70</b>
<b>G.7.2</b>	<b>Support Staff Salary Schedules</b>	.....	<b>70</b>
<b>G.7.3</b>	<b>Support Staff Supplementary Pay /Overtime</b>	.....	<b>71</b>
<b>G.7.4</b>	<b>Support Staff Fringe Benefits</b>	.....	<b>71</b>
<b>G.7.5</b>	<b>Support Staff Leaves and Absences</b>	.....	<b>71</b>
<b>G.8.0</b>	<b>Support Staff Hiring</b>	.....	<b>71</b>
<b>G.8.1</b>	<b>Fingerprinting Requirements</b>	.....	<b>72</b>
<b>G.8.2</b>	<b>Part-time and Substitute Support Staff Employment</b>	.....	<b>72</b>
<b>G.9</b>	<b>Support Staff Orientation and Training</b>	.....	<b>73</b>
<b>G.10</b>	<b>Support Staff Schedules</b>	.....	<b>73</b>
<b>G.10.1</b>	<b>Support Workload</b>	.....	<b>73</b>
<b>G.10.2</b>	<b>Time Cards for Support Staff</b>	.....	<b>74</b>
<b>G.11</b>	<b>Support Staff Meetings</b>	.....	<b>75</b>
<b>G.12</b>	<b>Evaluation of Support Staff</b>	.....	<b>75</b>
<b>G.13.0</b>	<b>Resignation of Support Staff Members</b>	.....	<b>75</b>
<b>G.13.1</b>	<b>Reduction in Force (RIF) of Support Staff</b>	.....	<b>75</b>
<b>G.13.2</b>	<b>Discipline of Support Staff Members</b>	.....	<b>76</b>
<b>G.13.2-A</b>	<b>Definitions</b>	.....	<b>76</b>
<b>G.13.2-B</b>	<b>Infractions Warranting Discipline</b>	.....	<b>76</b>
<b>G.13.2-C</b>	<b>General Provisions for Discipline</b>	.....	<b>77</b>
<b>G.13.3</b>	<b>Minor Discipline</b>	.....	<b>77</b>
<b>G.13.3-A</b>	<b>Minor Discipline Hearing</b>	.....	<b>77</b>
<b>G.13.3-B</b>	<b>Appeal of Minor Discipline</b>	.....	<b>78</b>
<b>G.13.4</b>	<b>Termination Pursuant to 22-10A-25 NMSA (1978)</b>	.....	<b>78</b>
<b>G.13.4-A</b>	<b>Termination Procedural Steps</b>	.....	<b>78</b>
<b>G.13.4-B</b>	<b>Appeal Requirement and Content</b>	.....	<b>79</b>
<b>G.13.4-C</b>	<b>Appeal Hearing Procedure</b>	.....	<b>79</b>
<b>G.13.4-D</b>	<b>Termination Arbitration Appeal</b>	.....	<b>80</b>
<b>G.13.4-E</b>	<b>Arbitration Hearing Procedure</b>	.....	<b>81</b>

## **G.1 Personnel Goals/Priority Objectives**

The Board recognizes that dynamic and efficient staff members dedicated to education are necessary to maintain a constantly improving educational program. The Board is interested in its personnel as individuals, and it recognizes its responsibility for promoting the general welfare of the staff members.

Duties of these staff members shall be outlined and assigned by the Superintendent. Additionally, the Board establishes, as personnel service goals, the following:

- Recruiting, selecting, and employing the best-qualified personnel to staff the school system.
- An employee appraisal program that will contribute to the continuous improvement of staff performance.
- Professional development and in-service training programs for employees that will improve staff performance and student achievement.
- Deployment of the available personnel to ensure that they are utilized as effectively as possible within budgetary constraints.
- A staff compensation program sufficient to attract and retain qualified employees within the fiscal limitations of the District.

*Adopted: December 2009*

## **G.2.0 General Personnel Policy**

### **G.2.1 Classification of Employees**

The CMS Board of Education designates and defines the following classifications of employees:

- **Licensed Staff**  
Licensed staff members are all employees of the Capitan Municipal Schools who are required by state law or by District policy, regulation, or job description to possess teaching licenses from the New Mexico Public Education Department for the purpose of performing their jobs.
- **Support Staff**  
Support staff members are all employees of the District who are not required by state law or by District policy, regulation, or job description to possess teaching licenses from the New Mexico Public Education Department for the purpose of performing their jobs, unless they are expressly designated as professional staff member in notices of employment or contract executed by the Board.

*Adopted: December 2009*

## **G.2.2 Equal Employment Opportunity**

Discrimination against an otherwise qualified individual with a disability or an individual by reason of race, color, religion, sex, sexual orientation, age, or national origin is prohibited. Efforts will be made in recruitment and employment to ensure equal opportunity in employment for all qualified persons.

### **G.2.2-A Compliance Officer**

The Superintendent shall be the compliance officer. Any person who feels unlawfully discriminated against or to have been the victim of unlawful discrimination by an agent or employee of the District or who knows of such discrimination against another person should file a complaint form with the Superintendent (Appendix G-1). If the Superintendent is the one alleged to have unlawfully discriminated, the complaint shall be filed with the President of the Board.

### **G.2.2-B Complaint Procedure**

The District is committed to investigating each complaint and to taking appropriate action on all confirmed violations of policy. The Superintendent shall investigate and document complaints filed pursuant to this regulation as soon as reasonable. In investigating the complaint, the Superintendent will maintain confidentiality to the extent reasonably possible. The Superintendent shall also investigate incidents of policy violation that are raised by the Board. Anonymous accusations shall not warrant an investigation.

If after the initial investigation, the Superintendent has reason to believe that a violation of policy has occurred; the Superintendent shall determine whether or not to hold an administrative hearing and/or to recommend bringing the matter before the Board.

If the person alleged to have violated policy is a teacher or an administrator, the due process provision of District policy shall apply, except that the supervising administrator may be assigned to conduct the hearing. In cases of serious misconduct, dismissal or suspension proceeding in accordance with statutes may be initiated.

If the person alleged to have violated policy is a support staff employee, the Superintendent may follow due process and impose discipline under district policy if the evidence so warrants. The Superintendent also may recommend a suspension, recommend dismissal, or impose other appropriate discipline.

If the Superintendent's investigation reveals no reasonable cause to believe policy has been violated the Superintendent shall so inform the complaining party in writing.

### **G.2.2-C Timelines**

The complaint must be filed within thirty (30) calendar days of the time the complaining party knows or should have known that there were grounds for a complaint/grievance.

Once the written complaint has been filed using the forms provided in policy, the Superintendent, immediate supervisor, or building administrator has five (5) working days to investigate and respond in writing to the complaining party.

If the immediate supervisor or building administrator does not respond, the complaining party can then file the report with the Superintendent. The Superintendent will have ten (10) working days to respond in writing to the complaining party.

If the Superintendent does not respond within the ten (10) days, then the complaining party may bring the complaint before the Board. The Board will then review and have thirty (30) calendar days to respond to the complaining party in writing.

*Adopted: December 2009*

### **G.2.3 Staff Involvement in Decision Making/Professional Organizations**

The Board encourages employees to contribute their ideas for the betterment of Capitan Municipal Schools and in support of the Educational Plan for Student Success (EPSS). The staff will be asked to provide input on policies and regulations, goals and objectives, curriculum, services, budget, facilities, etc.

#### **G.2.3.1 Participation in Professional Organizations**

The Capitan Board of Education recognizes that professional organizations have as primary purposes the teaching profession and the improvement of professional practices and ethical conduct of its members. The Board of Education also recognizes that all personnel and Boards of Education have the common goal of providing the best possible education for children and youth. Therefore, all personnel of the Capitan Schools may elect to belong and to participate in the activities of professional organizations.

#### **G.2.3.2 Recognition of Capitan Association of Classroom Teachers**

The Capitan Board of Education hereby acknowledges the Capitan Association of Classroom Teachers as a professional organization. Through participation, teachers may participate in the development of those policies that affect the personnel and the instructional programs of the Capitan Municipal Schools. This participation shall be based on procedures developed in cooperation with participating teachers and the Superintendent.

*Adopted: December 2009*

### **G.2.4 Statement of Ethics for School Employees**

We, professional educators of New Mexico, affirm our belief in the worth and dignity of humanity. We recognize the supreme importance of the pursuit of truth, the encouragement of scholarship, and the promotion of democratic citizenship. We regard as essential to these goals the protection of freedom to learn and to teach with the guarantee of equal educational opportunity for all. We affirm and accept our responsibility to practice our profession according to the highest ethical standards. We acknowledge the magnitude of the profession we have



chosen, and engage ourselves, individually and collectively, to judge our colleagues and to be judged by them in accordance with the applicable provisions of this code.

**Principle I: Commitment to the student.**

We measure success by the progress of each student toward achievement of his/her maximum potential. We therefore work to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. We recognize the importance of cooperative relationships with other community institutions, especially the home. In fulfilling our obligation to the student, we:

- deal justly and considerately with each student;
- encourage the student to study and express varying points of view and respect his/her right to form his/her own judgment;
- conduct conferences with or concerning students in an appropriate place and manner;
- seek constantly to improve learning facilities and opportunities.

**Principle II: Commitment to the community.**

We believe that patriotism in its highest form requires dedication to the principles of our democratic heritage. We share with all other citizens the responsibility for the development of sound public policy. As educators, we are particularly accountable for participating in the development of educational programs and policies and for interpreting them to the public. In fulfilling our obligations to the community, we:

- share the responsibility for improving the educational opportunities for all;
- recognize that each educational institution has a person authorized to interpret its official policies;
- acknowledge the right and responsibility of the public to participate in the formulation of educational policy;
- evaluate through appropriate professional procedures conditions within a district or institution of learning, make known serious deficiencies, and take action deemed necessary and proper;
- assume full political and citizenship responsibilities, but refrain from exploiting the institutional privileges of our professional positions to promote political candidates of partisan activities;
- protect the educational program against undesirable infringement, and promote academic freedom.

**Principle III: Commitment to the profession.**

We believe that the quality of the services of the education profession directly influence [s] the future of the nation and its citizens. We therefore exert every effort to raise educational standards, to improve our service, to promote a climate in which the exercise of professional judgment is encouraged, to demonstrate integrity in all work-related activities and interactions in the school setting, and to achieve conditions which attract persons worthy of the trust to careers in education. Aware of the value of united effort, we contribute actively to the support, planning, and programs of our professional organizations. In fulfilling our obligations to the profession, we:

- recognize that a profession must accept responsibility for the conduct of its members and understand that our own conduct may be regarded as representative of our profession;

- participate and conduct ourselves in a responsible manner in the development and implementation of policies affecting education;
- cooperate in the selective recruitment of prospective teachers and in the orientation of student teachers, interns, and those colleagues new to their positions;
- accord just and equitable treatment to all members of the profession in the exercise of their professional rights and responsibilities;
- refrain from assigning professional duties to nonprofessional personnel when such assignment is not in the best interest of the student;
- refrain from exerting undue influence based on the authority of our positions in the determination of professional decisions by colleagues;
- keep the trust under which confidential information is exchanged;
- make appropriate use of the time granted for professional purposes;
- interpret and use the writings of others and the findings of educational research with intellectual honesty;
- maintain our integrity when dissenting by basing our public criticism of education on valid assumptions as established by careful evaluation of facts;
- respond accurately to requests for evaluation of colleagues seeking professional positions;
- provide applicants seeking information about a position with an honest description of the assignment, the conditions of work and related matters.

**Principle IV: Commitment to professional employment practices.**

We regard the employment agreement as a solemn pledge to be executed both in spirit and in fact in a manner consistent with the highest ideals of professional service. Sound professional personnel relationships with governing boards are built upon integrity, dignity, and mutual respect between employees, administrators, and local school boards. In fulfilling our obligation to professional employment practices, we:

- apply for or offer a position on the basis of professional and legal qualifications;
- apply for a specific position only when it is known to be vacant and refrain from such practices as underbidding or commenting adversely about other candidates;
- fill no vacancy except where the terms, conditions, and policies are known;
- adhere to and respect the conditions of a contract or to the terms of an appointment until either has been terminated legally or by mutual consent;
- give prompt notice of any change in availability of service, in status of applications, or in change in position;
- conduct professional business through recognized educational and professional channels.  
[6.60.9.8 NMAC]

*Adopted: December 2009*

**G.2.5 Staff Conflict of Interest**

**G.2.5-A Nepotism**

A person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, or sister-in-law of a member of the

Board or Superintendent may not be recommended for employment in any capacity in the District. Nothing in this section of this policy shall prohibit the continued employment of such a person employed on or before July 1, 2008.

#### **G.2.5-B Prohibited Acts**

It is unlawful for a public officer or licensed employee to take an official act for the primary purpose of directly enhancing a person financial interest or position.

A Board member or licensed employee shall not, directly or indirectly, solicit, sell, or be a party to a transaction to solicit or sell a product or service to the school or District with which he/she is associated. This does not apply to a person making a sale in the regular course of business while complying with the procurement laws and rules of the State of New Mexico. All staff members shall complete the Employee/Board Member Disclosure form. (Appendix G-2)

No person shall sell or use a student, faculty, or staff list with personal identifying information obtained from the District for the purpose of direct marketing of goods or services except for legitimate education purposes or with the authorized release of each individual on the list(s).

#### **G.2.5-C Vendor Relations**

No employee of the District will accept gifts from any person, group, or entity doing, or desiring to do, business with the District. The acceptance of any business-related gratuity is specifically prohibited, except for widely distributed, advertising items of nominal value.

This policy should not be construed to deem unacceptable inexpensive novelty advertising items of general distribution. Acceptance of business lunches and holiday gifts for general consumption are acceptable under this policy.

*Adopted: December 2009*

### **G.2.6 Standards of Professional Conduct**

#### **Preamble**

We, licensed New Mexico educators acknowledge that ethical values in our schools cannot exist without ethical leadership. It is our ultimate goal to educate children so that they may become productive citizens; we understand that our guidance and ability to provide choices has a profound effect on reaching this goal. In affording students and each other choices, we agree to consider the consequence of each choice, the moral value best exemplified by the recommended choice, and our position on the choice if it were applied to us. These principles apply equally to all licensed educators in all schools except where they are uniquely applicable to public schools or where they conflict with principles of religious freedom.

Moral values are to ethical leadership what years of experience are to a successful educator. The former sets the stage for success of the latter. Abstract principles that espouse excellence do not easily equate into simple behavioral maxims. We are certain that some foundational concepts can be embraced because they truly celebrate desirable moral values.

These concepts include respect for self and others, honesty and openness, the delicate balance between absolute freedom and safety, the equally delicate balance between confidentiality and the right to know, equality of opportunity, fairness to all, and personal integrity.

In the final analysis it is our consistent ethical leadership that wins the most allies and produces the best results. Not only does this code highlight our professional responsibilities, but also it stimulates us to discuss the professional implications of our ethical choices and ethical recommendations, causes us to assess and reassess our application of moral values, and sets forth concrete behaviors appropriate for education professionals. We are committed to this code and understand that it provides minimally accepted standards of professional conduct in education.

### **Standard I: Duty to the student.**

We endeavor to stimulate students to think and to learn while at the same time we seek to protect them from any harm. Ethical leadership requires licensed educators to teach not only by use of pedagogical tools, but also by consistent and justifiable personal example. To satisfy this obligation, we:

- shall, in compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g, 34C.F.R. Part 99), the Individuals with Disabilities Education Act (20 U.S.C. Section 1401 et seq., 34 C.F.R. Part 300), the Mental Health and Developmental Disabilities Code (Section 43-1-19, NMSA 1978), the Inspection of Public Records Act (Section 14-2-1 et seq., NMSA 1978), the Public School Code (Section 22-1-8, NMSA 1978), and the Children's Code (Sections 32A-2-32, 32A-4-3, NMSA 1978), withhold confidential student records or information about a student or his/her personal and family life unless release of information is allowed, permitted by the student's parent(s)/legal guardian, or required by law;
- shall not discriminate or permit students within our control, supervision or responsibility to discriminate against any other student on the basis of race, color, national origin, ethnicity, sex, sexual orientation, disability, religion, or serious medical condition;
- shall avoid using our positions as licensed school employees to exploit or unduly influence a student into engaging in an illegal act, immoral act, or any other behavior that would subject a licensed school employee or student to discipline for misconduct whether or not the student actually engages in the behavior;
- shall tutor students only in accordance with local board policies, if any, only after written permission from the student's parent(s)/legal guardian, and only at a place or time approved by the local school and/or the student's parent(s)/legal guardian;
- shall not give a gift to any one student unless all students situated similarly receive or are offered gifts of equal value for the same reason;
- shall not lend a student money except in clear and occasional circumstances, such as where a student may go without food or beverage or be unable to participate in a school activity without financial assistance;
- shall not have inappropriate contact with any student, whether or not on school property, which includes but is not limited to:
  - all forms of sexual touching, sexual relations or romantic relations;
  - inappropriate touching which is any physical touching, embracing, petting, hand-holding, or kissing that is unwelcome by the student or is otherwise inappropriate given the age, sex and maturity of the student;

- any open displays of affection toward mostly-boys or mostly-girls; and offering or giving a ride to a student
- unless absolutely unavoidable, such as where a student has missed his/her usual transportation and is unable to make reasonable substitute arrangements;
- shall not interfere with a student's right to a public education by sexually harassing a student or permitting students within our control, supervision or responsibility to sexually harass any other student, which prohibited behavior includes:
  - making any sexual advances, requests for sexual favors, repeated sexual references, any name calling by means of sexual references or references directed at gender-specific students, any other verbal or physical conduct of a physical nature with a student even where the licensed educator believes the student consents or the student actually initiates the activity, and any display/distribution of sexually oriented materials where students can see them; and
  - creating an intimidating, hostile or offensive work/school environment by at a minimum engaging in any of the prohibited behaviors set forth at Paragraph (7) or Subparagraph (a) of Paragraph (8), Subsection B of 6.60.9.9 NMAC.

**Standard II: Duty to the profession.**

The education profession has been vested by the public with an awesome trust and responsibility. To live up to that lofty expectation, we must continually engender public confidence in the integrity of our profession, and must strive consistently in educating the children of New Mexico, all of whom will one-day shape the future. To satisfy this obligation, we:

- shall not make a false or misleading statement or fail to disclose a material fact in any application for educational employment or licensure;
- shall not orally or in writing misrepresent our professional qualifications;
- shall not assist persons into educational employment whom we know to be unqualified in respect to their character, education, or employment history;
- shall not make a false or misleading statement concerning the qualifications of anyone in or desiring employment in education;
- shall not permit or assist unqualified or unauthorized persons to engage in teaching or other employment within a school;
- shall not disclose personal, medical, or other confidential information about other educational colleagues to anyone unless disclosure is required or authorized by law;
- shall not knowingly make false or derogatory personal comments about an educational colleague, although first amendment protected comments on or off campus are not prohibited;
- shall not accept any gratuity, gift, meal, discount, entertainment, hospitality, loan, forbearance, favor, or other item having monetary value whose market value exceeds \$100, excluding approved educational awards, honoraria, plaques, trophies, and prizes;
- shall avoid conduct connected with official duties that is unfair, improper, illegal or gives the appearance of being improper or illegal;
- shall not sexually harass any school employee, any school visitor or anyone else we might encounter in the course of our official duties, which includes:

- making any sexual advances, requests for sexual favors, repeated sexual references, and name calling by means of sexual references or references directed at any gender-specific individuals named above;
- making any other verbal gesture or physical conduct with any of the above-named individuals even where the licensed educator believes they consent or they actually initiate the activity;
- displaying or distributing any sexually oriented materials where the above-named individuals can see them;
- creating an intimidating, hostile, or offensive work/school environment by engaging in any of the prohibited behaviors set forth at Subparagraphs (a), (b) or (c), Paragraph (10), Subsection C of 6.60.9.9 NMAC;
- shall educate oneself at least annually about avoiding sexual harassment by either attending periodic training, reviewing sexual harassment literature or the EEOC guidelines found at Title 29 Code of Federal Regulations Part 1604 (29 C.F.R. Section 1604.1 et seq.), or contacting appropriate school human resources personnel;
- shall not engage in inappropriate displays of affection, even with consenting adults, while on school property or during school events off campus;
- shall not without permission of a supervisor use public school property to conduct personal business or our personal affairs;
- shall use educational facilities and property only for educational purposes or purposes for which they are intended consistent with applicable policy, law and regulation;
- shall not discriminate against any school employee, or any other person with whom we have any dealings or contact in the course of our official duties, on the basis of race, color, national origin, ethnicity, sex, sexual orientation, disability, religion, or serious medical condition; shall not engage in any outside employment:
  - the performance of which conflicts with our public school duties, such as where a licensed educator takes a private job that would require performance in the very school district where he/she is employed;
  - where we use confidential/privileged information obtained from our public school employment as part or all of our private employment duties; and
  - that impairs our physical ability to perform our school duties;
- shall not, with the intent to conceal/confuse a fact, change or alter any writing or encourage anyone else to change or alter any document:
  - in connection with our official school duties;
  - in connection with another licensed person's official school duties;
  - in connection with any standardized or non-standardized testing;
  - in connection with any school application or disclosure process; and
  - in connection with any writing submitted to the public education department related to our initial or continued licensure, including endorsements;
- shall not in connection with any state board-approved teacher test knowingly make any misrepresentations about one's identity, or engage in any false or deceptive acts of test-taking or test-registering;
- shall not engage in any conduct or make any statement:
  - that would breach the security of any standardized or non-standardized tests;
  - that would ignore administering portions or the entirety of any standardized or non-standardized testing instructions;

- that would give students an unfair advantage in taking a standardized or non-standardized test;
- that would give a particular school or a particular classroom an unfair advantage in taking a standardized or non-standardized test; and
- that would assist students in obtaining services or benefits for which they do not qualify or are not entitled;
- shall not, when on school property or off campus while representing the school or attending a school function, engage in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to disturb the peace;
- shall not hold, or continue to hold, employment for which educator licensure or certification is required when the individual knew, should have known or is informed by the PED, that the individual does not hold the required credentials; and
- shall not use school information technology equipment, hardware, software or internet access to view, download, display, store or print pornographic images or advertisements, nude images, or sexually explicit depictions or language;
- shall not engage in unprofessional conduct, which conduct shall include but not be limited to the following:
  - striking, assaulting or restraining a student for no valid reason;
  - using any written or spoken words in public schools or at school events that are inflammatory, derogatory or otherwise demonstrate a bias against a person or group, on the basis of their race, religion, culture, ethnicity, sexual preference, sexuality or physical disability;
  - bringing firearms onto school property or possessing them on school property, except with proper authorization;
  - possessing or consuming alcohol beverages at school;
  - possessing or using illegal drugs;
  - being under the influence of alcohol or illegal drugs at school;
  - actively obstructing an investigation into the possible unethical or illegal conduct of a school employee; and
  - engaging in favoritism or preferential treatment toward any school employee or applicant in regards to that individual's hiring, discipline, terms of employment, working conditions or work performance due to that individual's familial relationship with the licensee;
- shall report any knowledge of inappropriate contact, as provided by Paragraph (7) of Subsection B of 6.60.9 NMAC with a student or other school employee to the local school authority within 30 days of obtaining such knowledge.[6.60.9.9 NMAC – N]

### **Sanctions**

The standards of professional conduct establish minimal standards of accepted professional conduct with which all educators and administrators are required to comply. Therefore, the Secretary of Education through the professional licensure unit of the Public Education Department (PED), may revoke or suspend the license of any person, or may deny applications for licensure or re-licensure to any person, who is within the scope of this regulation and who after hearing is found to have failed to comply with one (1) or more of the provisions of the

standards of professional conduct set forth in Section 6.60.9.9 NMAC, exclusive of the Preamble.

Violations of the Standards of Professional Conduct that lead to discharge or termination of a school employee will be considered violations of Gross Misconduct. Such violations leading to termination of employment will result in forfeiture of rights to COBRA continuation.

*Adopted: December 2009*

### **G.2.7 Staff Conduct**

All employees of the District are expected to conduct themselves in a manner consistent with effective and orderly education and to protect students and District property. No employee shall, by action or inaction, interfere with or disrupt any district activity or encourage any such disruption. All employees shall at all times attempt to maintain order, abide by the policies, rules, and regulations of the District, and carry out all applicable orders issued by the Superintendent.

No employee, while on or using school property, otherwise acting as an agent, or working in an official capacity for the District shall engage in:

- Physical or verbal abuse of or threat of harm to anyone.
- Causing damage or threat of damage to property of the District or property of a member of the community or a visitor to the school when the property is located on premises controlled by the District.
- Forceful or unauthorized entry to or occupation of District facilities, including buildings and grounds.
- Use, possession, distribution or sale of alcohol or of drugs or other illegal substances.
- Use of profane or abusive language, symbols, or conduct.
- Failure to comply with lawful direction of District officials or law-enforcement officer, or failure to identify oneself to such officials or officers when lawfully requested to do so.
- The carrying or possession of a weapon on school grounds.
- A violation of District policies and regulations.
- Any conduct violating federal, state, or applicable municipal law or regulation.
- Any other conduct that may obstruct, disrupt, or interfere with teaching, research, service, administrative, or disciplinary functions of the District, or any other activity sponsored or approved by the Board.

In addition to the foregoing, all staff members are expected to:

- Thoroughly acquaint themselves with the rules, regulation, and other information applicable to them contained within the policies of the Board.
- Conduct themselves in a manner consistent with effective and orderly education and to protect the students and the District property.
- Maintain order in a manner consistent with District policies and regulations.
- Comply promptly with all orders of the Superintendent and the administrator who is their immediate supervisor.



- Dress and maintain a general appearance that reflects their position and does not detract from the educational program of the school.
- Comply with the requirement of 22-5-4.4 NMSA 1978 by immediately reporting student drug or alcohol use or abuse to the building administrator or Superintendent.
- Guard against misappropriation of school assets and immediately report suspected theft or fraud to their immediate supervisor and/or the Superintendent.

Employees who violate these rules are subject to disciplinary action.

An employee may be placed on administrative leave with pay and assigned to home during work hours in order to conclude a review of the employee's actions or activities pending an administrative recommendation. The use of administrative leave is not a disciplinary action and may be promulgated only by the Superintendent.

*Adopted: December 2009*

### **G.2.8 Staff Conduct with Students**

Employees are expected to exercise general supervision over the conduct of students, not only while in the schoolroom, but also before and after school, and during recess. At all times teachers and other staff members will accord students the dignity and respect that they deserve, and avoid embarrassing any student unnecessarily.

Students are expected to regard all school employees as individuals who are employed to provide direct or indirect contributions to learning. While students are to have considerable latitude in making choices for themselves, they shall be required to respect the rights of all school employees and other students, and interference with those rights will not be tolerated.

Students shall not have the right to interfere with the efforts of instructional staff members to coordinate or assist in learning, to disseminate information for purposes of learning, or to otherwise implement a learning program. Nor shall a student have the right to interfere with the motivation to learn or the learning activities and efforts of other students. No student shall have the right to interfere with or disrupt any employee's work activities.

All personnel employed by the District are expected to relate to students of the District in a manner that maintains social and moral patterns of behavior consistent with community standards and acceptable professional conduct.

Relationships between staff members and students that include: "dating," "courtship," or "romantic involvement" are prohibited. These behaviors deviate from ethical or professional standards and shall be deemed unacceptable and contrary to the expectations of District governance.

Staff/student relationships shall reflect mutual respect between staff members and students and shall support the dignity of the entire profession and educational process.

Violations of the above shall be considered serious and may result in severe disciplinary action which can include termination or discharge.

*Adopted: December 2009; Revised: February 2014*

### **G.2.9 Gifts to Staff Members**

An employee, or that person's family, shall not knowingly accept from a restricted donor a gift of a market value greater than two hundred fifty dollars (\$250) and a licensed educator must not accept a gift with a market value exceeding one hundred dollars (\$100). A restricted donor is a person or agent of a person:

- seeking a transaction with the donee's agency.
- who will be directly and substantially affected financially by performance of the donee's duties or the effect will be greater on a class of persons to whom the donor belongs than to the general public.
- with a matter pending before a regulatory agency in which the donee has discretionary authority.
- who is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction.

An employee shall not solicit gifts or donations for a charity in such a manner that it appears that the purpose of the donor in making the gift is to influence the employee in the performance of an official duty. Students, parents, and other patrons of the District shall be discouraged from the routine presentation of gifts to employees. This shall not be interpreted as intended to discourage acts of generosity in unusual situation, and simple remembrances expressive of affection or gratitude shall not be regarded as violation of this policy.

Gifts to students by staff members shall be discouraged. Simple remembrances on certain occasions to all students in a class or section shall not be regarded as a violation of this policy.

*Adopted: December 2009*

### **G.2.10 Solicitations by Staff Members**

A school employee's position in the district shall not be used to influence parents or students to purchase books or other merchandise, except for materials approved by the superintendent for use in the classroom.

Staff member solicitation(s) of other employees and/or students for any profit, nonprofit, or charitable groups, institution, or organizations must have the approval of the Superintendent in advance.

No other solicitations shall be made by or of employees during official duty/work time.

*Adopted: December 2009*

## **G.2.11 Drug-Free Workplace**

The purpose of this policy is to insure a drug-free environment for all employees, to establish a drug awareness program for all school district personnel, and to provide assurances to state and federal government agencies that the Capitan School District is complying with the requirements of the Drug-Free Workplace Act of 1988 and the Drug-Free Schools and Communities Act of 1986, as amended in 1989, and all regulations promulgated there under.

The Board of Education for the Capitan Municipal Schools recognizes the importance of its employees serving as role models for its students. The Board recognizes the employee's right of privacy as long as it does not deter the assurance of a drug-free school, campus or workplace. Confidentiality will be maintained by the Board of Education and district administrators until the judicial system is involved.

The Capitan School District prohibits the employees of the district from unlawfully manufacturing, distributing, dispensing, possessing or using alcohol or controlled substances and from possessing, using, selling, or distributing drug paraphernalia, in the workplace. Violation of this prohibition may result in termination of employment with the district or other appropriate disciplinary action, and may include referral to law enforcement.

Any employee properly using any prescribed medication that may affect or impair such employee's performance of his or her job duties (for instance, by causing drowsiness) despite such proper use, shall submit a confidential report of such use to the Superintendent's Office upon reporting for work on the first day of such use. Individual reports will be kept in a separate locked file. Access will be limited to Superintendent or school nurse. Access will be documented.

As a condition of employment, each employee shall abide by the terms of the district policy respecting a drug-free workplace. Any employee who violates this policy in any manner is subject to discipline, which may include, but is not limited to, dismissal.

### **G.2.11-A Definitions**

- 1) "Controlled substance" shall mean any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, or any other controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act (21 USC 812) and as further defined by regulation 21 CFR 1300.11 through 1300.15.3.
- 2) "Workplace" is defined as the site for the performance of work done in connection with employment, and shall include any place where work of the school district is performed, including a school building or other premises, any school owned vehicle or any other approved vehicle used to transport students to and from school or school activities, and off school property during any school sponsored or school approved activity, event or function where students are under the supervision of the school district.
- 3) "Alcohol" shall refer to any liquor, wine, beer or other beverage containing alcohol.

- 4) “Drugs” - Any drug, including illegal drugs, marijuana, inhalants, legal prescription and over-the-counter drugs used or possessed or distributed for unauthorized purposes, and counterfeit (look-alike) substances.
- 5) “Drug Paraphernalia” - Equipment or apparatus designed for or used for the purpose of measuring, packaging, distributing or facilitating the use of drugs.
- 6) “Substance Abuse” - The use of drugs or alcohol in violation of state or federal law or in violation of School District Policy.

#### **G.2.11-B Non-Medical Use or Abuse of Drugs or Alcohol**

The district’s posture in dealing with employees who engage in the nonmedical use of drugs and/or the abuse of alcohol is to be one of constructive confrontation in a supportive environment and supportive relationship. The approach is based on the following premises;

- Each employee is responsible for the employee’s own action.
- Each employee is a role model for students.
- Each employee who seeks help is to be given the opportunity to do so in a supportive environment.
- The District shall not ignore employee problems.
- Constructive confrontation will be utilized to make employees aware of opportunities and choices for help.
- Confidentiality will be maintained by the District.
- Outside referrals to nonschool personnel will be provided, at employee expense, to employees who indicate an interest.
- Employees will be required to provide information on progress in dealing with problems.
- Supervisory staff members will receive orientation on methods of constructive confrontation.
- Opportunities for self-referral will be provided.
- As recommended by outside professional sources, the District will consider support to an employee during re-entry into the workplace.
- The District’s right to intervene is based on (1) a basic concern for the health and welfare of the persons whom it employs and (2) the right to expect quality job performance.
- School employees are human and should not be considered any less vulnerable or immune to human stress than any other person.
- In spite of the above, school employees whose nonmedical use of drugs or use of alcohol endangers the health and safety of student or other employees may of necessity be dealt with summarily.

The nonmedical possession or use of abuse of drugs and/or use of alcohol is forbidden on school property or at school-sponsored activities away from school property where students are present. Employees determined to be in possession of, using, or abusing drugs or using alcohol shall be reported immediately to the principal or Superintendent.

The Superintendent will conduct an investigation in consultation with legal counsel as necessary. If the investigation shows sufficient evidence to suggest that the employee was involved with distribution or otherwise in violation of the law, law enforcement shall be notified. If the results of the investigation show that the employee’s actions endangered the health, and/or safety of

students or other employees, the Superintendent shall take disciplinary action or recommend disciplinary action to the Board in accordance with policies and statutes.

### **G.2.11-C Enforcement of Policy**

Whenever a school official has reasonable suspicion to believe that the employee is in possession of illegal or unauthorized materials, the employee will be presented with the cause of reasonable suspicion and if necessary this employee's person and/or personal effects (e.g., purse, book bag, etc.) may be searched.

Desks, cabinets, closets and similar facilities are District property and remain at all times under the control of the School District; however, employees are expected to assume reasonable responsibility for the security of their desks, cabinets, closets and similar facilities. Employees have no reasonable expectation of privacy in such District property. With reasonable suspicion, general inspections of desks, cabinets, closets and similar facilities may be conducted by authorized school officials at any time, without consent, and without a search warrant. Because each room is also used by other persons, the employee will be given the opportunity to explain the presence of any illegal or unauthorized materials found in desks, cabinets, closets and similar facilities.

Employees are permitted to park on District premises as a matter of privilege, not of right. The School District retains the authority to conduct routine patrols of School District parking lots and inspections of the exteriors of vehicles, and so much of the interiors as may be observed from the exteriors, on District property. The interiors of vehicles on District property may be inspected by school personnel whenever an authorized school official has reasonable suspicion to believe that illegal or unauthorized materials may be contained inside. Such patrols and inspections may be conducted without notice, without consent, and without a search warrant. Because each vehicle is also used by other persons, the employee will be given the opportunity to explain the presence of any illegal or unauthorized materials found in the exterior and/or interior of vehicle.

In any of the searches mentioned in this policy, the School District administration is authorized to utilize dogs whose reliability and accuracy for sniffing contraband has been established to aid in the search for contraband on District property and vehicles parked on School District property. The dogs will be accompanied by a qualified and authorized handler who will be responsible for the dog's actions. An indication by the dog that contraband is present on District property or in an automobile on District property shall be reasonable cause for a further search by school officials or law enforcement.

### **G.2.11-D Convictions**

Any employee who is convicted of a violation of a criminal drug statute occurring in the workplace shall, within five (5) days of the date of such conviction, notifying his immediate supervisor in writing of such conviction. The school district, upon receiving such written notice, shall take one of the following actions within thirty (30) days:

- impose appropriate personnel action against the employee up to and including termination of employment; or

- require the employee to participate satisfactorily in a drug abuse assistance, counseling or rehabilitation program approved for such purposes by a federal, state, local health, law enforcement, or other appropriate agency.

### **G.2.11-E Distribution and Maintenance of Policy**

Policy regarding “Drug-free Workplace” shall be placed in the staff handbook for all employees. Employees shall be informed that compliance with this policy is mandatory. The District shall make a good faith effort to maintain a drug-free workplace with the implementation of this policy.

*Adopted: December 2009*

### **G.2.12 Tobacco Free Campus**

The possession or use of tobacco products is prohibited in the following locations:

- School grounds
- School buildings.
- School parking lots.
- School playing fields.
- School buses and other District vehicles.
- Off-campus school-sponsored events.

For the purpose of this policy, “use of tobacco products” will mean all uses of tobacco, including cigars, cigarettes, pipes, and smokeless tobacco products, e-cigarettes and nicotine Liquid containers. The general public and employees are asked to honor the tobacco free policy as spectators at outdoor extra-curricular events.

A violation of this policy by any employee of the District will be considered insubordination and subject the employee to disciplinary action. Citizens who are observed smoking or using tobacco products on District property shall be asked to refrain from this use. Repeated violations may result in prohibiting the individual from entering District property for a specified period of time.

The prohibitions do not apply to an adult when possession of tobacco products are for demonstration purposes as a necessary instructional component of a tobacco prevention or cessation program that is approved by the school.

*Adopted: December 2009; Revised February 2016*

### **G.2.13 Staff Personal Security and Safety**

#### **G.2.13-A Violence**

Any employee who observes or has direct knowledge of an act of violence upon an employee during the performance of the employee’s duties or of an act of vandalism to school property

shall file an incident report in accordance with procedures established by the New Mexico Secretary of Education.

### **G.2.13-B Threats**

Any employee who is threatened with harm by an individual or a group while carrying out assigned duties shall immediately notify the building principal or activity supervisor. The principal or supervisor shall then immediately notify the Superintendent's office of the threat and together they shall take immediate steps in cooperation with the employee to provide every reasonable precaution for the employee's safety. Precautionary steps, including contacting law enforcement, seeking injunctive relief or any advisable legal action, shall be reported to the Superintendent's office at the earliest possible time.

*Adopted: December 2009*

### **G.2.14 Employee Assistance**

When, in the opinion of the immediate supervisor and/or the Superintendent, an employee's physical or emotional condition warrants, based on staff and/or student safety, the District may require a complete examination at District expense by a licensed physician selected by the District.

The Superintendent shall have procedures for complying with the requirements of Occupational Safety and Health Administration (OSHA) including an exposure-control plan, methods of compliance, work-practice controls, post-exposure evaluation and follow-up, and administering vaccine to employees exposed to Hepatitis B virus.

All employees who as a result of their employment have had significant exposure to bloodborne pathogens (Hepatitis B/HIV) are required to report the details of the exposure in writing to the District and are required to follow post-exposure evaluation and follow-up activities in accordance with New Mexico and federal laws. An employee who chooses not to complete these reporting requirements will be at risk of losing any claim to rights.

*Adopted: December 2009*

### **G.2.15 Blood borne Pathogen – Exposure Control**

Employees with occupational exposure to human blood, human blood components, products made from human blood, or pathogenic microorganisms, including but not limited to Hepatitis B virus or HIV, shall comply with regulations designed to eliminate or minimize employee exposure.

#### **G.2.15-A Exposure Determination**

**High Risk:** Coaches, PE instructors, custodians, certain Special Education program personnel, playground duty personnel, and health services personnel.

**Moderate Risk:** Regular instructional program personnel, other special education program personnel, school level office personnel, maintenance personnel, food services personnel, and special assignment personnel such as counselors and librarians.

**Low Risk:** District level office personnel

Universal precautions shall be observed by all district employees to prevent contact with blood or other potentially infectious materials. Under circumstances in which differentiation between body fluid types is difficult or impossible, all body fluids shall be considered potentially infectious materials.

#### **G.2.15-B Work Practice Controls**

- The District shall provide hand-washing facilities that are readily accessible to employees.
- When hand-washing facilities are not feasible, the District shall provide either appropriate hand cleanser with clean cloth/paper towels or antiseptic towelettes. When these are used, hands shall be washed with soap and running water as soon as feasible.
- Employees shall wash hands and any other skin with soap and water, or flush mucous membranes with water immediately or as soon as feasible following contact of such body areas with blood or other potentially infectious materials.
- Contaminated needles and other contaminated sharps shall not be recapped or removed unless no other alternative is feasible. These should be placed in a puncture resistant, labeled, and leakproof container.
- Eating, drinking, applying cosmetics or lip balm, and handling contact lenses are prohibited in work areas where there is a reasonable likelihood of occupation exposure.
- No food or drink shall be kept in refrigerators, freezers, shelves, cabinets, or on countertops where infectious materials are present.
- All procedures involving potentially infectious materials shall be performed in such a manner as to minimize splashing, spraying, spattering, and generation of droplets of these substances.

#### **G.2.15-C Personal Protection Equipment**

The District shall provide at no cost to the employee personal protective equipment such as gloves, gowns, lab coats, face shields or masks, and eye protection as warranted for the level of occupational exposure to infectious substances.

Employees are required to use provided personal protective equipment unless in the employee documents with the District that use of the equipment would have resulted in a rare and extraordinary circumstance where use would have prevented the delivery of health care or safety services or would have posed an increased hazard to the safety of the worker.

All personal protective equipment shall be removed prior to leaving the work area.. When removed, it shall be placed in a designated area or container for storage, washing, decontamination, or disposal.

Gloves shall be worn when it can be reasonably anticipated that the employee may have hand contact with blood, other potentially infectious materials, mucous membranes, and non-intact skin; when performing vascular access procedures; and when handling or touching contaminated items or surfaces.



#### **G.2.15-D Housekeeping**

- The work site must be maintained in a clean and sanitary condition. There shall be an appropriate written schedule for cleaning and the method of decontamination based upon the location, type of surface to be cleaned, and tasks performed in the area.
- All school activity areas are cleaned daily.
- In cleaning operations involving human blood, a cleaning solution consisting of ten to one (10:1) ratio of water and bleach will be used.
- All equipment and working surfaces shall be cleaned and decontaminated after contact with blood or other potentially infectious materials.
- Broken glassware that may be contaminated shall not be picked up directly with the hands. It shall be cleaned up using mechanical means such as a brush and dust pan, tongs, or forceps.

#### **G.2.15-E Hepatitis B Vaccination**

Hepatitis B vaccination shall be made available to employees who have occupational exposure within ten (10) working days of initial assignment unless the employee has previously received the complete hepatitis B vaccination series, antibody testing has revealed that the employee is immune, or the vaccine is contraindicated for medical reasons. If a routine booster dose(s) of hepatitis B vaccine is recommended by the U.S. Public Health Service at a future date, such booster dose(s) shall be made available.

An employee who declines to accept hepatitis B vaccination that is offered must sign a statement to be placed in his/her personnel file that they are aware of the risks involved but decline the vaccination.

#### **G.2.15-F Post-exposure Evaluation**

Following a report of exposure, the District shall make immediately available to the exposed employee a confidential medical evaluation and follow-up, including at least the following elements:

- Documentation of the route(s) of exposure, and the circumstances under which the exposure incident occurred.
- Identification and documentation of the source individual, unless the District can establish that identification is infeasible or prohibited by state or local law.
  - The source individual's blood shall be tested as soon as feasible, and after consent is obtained, in order to determine HBV and HIV infectivity. If consent is not obtained, the District shall establish that legally required consent cannot be obtained. When the source individual's consent is not required by law, the source individual's blood, if available, shall be tested and the result documented.
  - When the source individual is already known to be infected with HBV or HIV, testing for the source individual's HBV or HIV status need not be repeated.
  - Results of the source individual's testing shall be made available to the exposed employee, and the employee shall be informed of applicable laws and regulations concerning disclosure of the identity and infectious status of the source individual.
- Post-exposure prophylaxis, when medically indicated, as recommended by the U.S. Public Health Service.

- Counseling.
- Evaluation of reported illnesses.

#### **G.2.15-G Information Provided to/from the Health Care Professional**

- The health care professional's written opinion for hepatitis B vaccination shall be limited to whether hepatitis B vaccination is indicated for an employee and whether the employee has received such vaccination.
- The health care professional's written opinion for post-exposure evaluation and follow-up shall be limited to the following information:
  - That the employee has been informed of the results of the evaluation.
  - That the employee has been told about any medical conditions resulting from exposure to blood or other potentially infectious materials that require further evaluation or treatment.
- All other findings or diagnoses shall remain confidential and shall not be included in the written report.

#### **G.2.15-H Information and Training**

All employees shall participate in a training program provided at no cost to the employees and during working hours. This training should be reviewed annually. The training shall include at the very least:

- The text of this policy.
- A general explanation of epidemiology and symptoms of bloodborne diseases.
- An explanation of the modes of transmission.
- An explanation of the use and limitations of methods that will prevent or reduce exposure.
- Information of the types, use, location, removal, and disposal of personal protective equipment.
- Information on the hepatitis B vaccine and its efficacy.
- Information on actions to take and persons to contact in an emergency involving blood or other potentially infectious materials.
- Explanation of procedure to follow for reporting an incident
- Opportunity for questions and answers with the person conducting the training.

The person conducting the training shall be knowledgeable in the subject matter covered by the elements contained in the training program as it relates to the school setting.

Training records shall be maintained for three (3) years and will contain the following:

- The dates of the training session(s).
- The contents of summary of the training.
- The name(s) and qualifications of the person(s) conducting the training.
- The names and job titles of all persons attending the training sessions.

#### **G.2.15-I Medical Records**

The District shall establish and maintain for thirty (30) years an accurate record for each employee with occupational exposure as defined herein. This record shall include:

- The name and Social Security number of the employee.

- A copy of the employee's hepatitis B vaccination status, including the dates of all hepatitis B vaccinations and any medical records relative to the employee's ability to receive vaccination.
- A copy of all results of examinations, medical testing, and follow-up procedures.
- The District's copy of the health care professional written opinion.
- A copy of the information provided to the health care professional.

The District shall ensure that employee records required by law are kept confidential and not disclosed with the employee's express written consent to any person except as required by law.

#### **G.2.15-J Availability and Transfer of Records**

The District shall ensure that all training records and medical records required by law shall be available upon request for examination and copying to the employee, to anyone having written consent of the employee, to the Director of the Occupational Safety and Health Administration (OSHA), and to the Assistant Secretary of Labor.

The District shall comply with the legal requirements involving transfer of records.

*Adopted: December 2009*

#### **G.2.16 Wellness/Communicable Diseases**

Employees with a communicable disease or being a carrier of a communicable disease will be permitted to retain their position, whenever, after reasonable accommodations and without undue hardship, there is no risk of transmission of the disease to others, provided an employee is able to continue to perform the essential functions of his/her position. While designed to protect students and employees, this policy also protects the legitimate interests and right of employees or potential employees having a communicable disease or being a carrier of a communicable disease.

Any decision affecting the employment, continued employment, or suspension from duty will be based upon competent medical advice and will balance the rights of the infected individual against the legitimate interest of the District in protecting the health a safety of the students and remaining employees. Such decisions shall be made in accordance with the provisions of this policy and District administrative procedures.

Applicants for employment who are carriers of or who have a communicable disease are obligated to disclose that fact before being employed. Current employees who are carriers of or who have a communicable disease are obliged to disclose that fact to the Superintendent as soon as they, the employee, is aware of the condition. The District will not require mandatory testing or screening of individuals for communicable diseases as a condition or employment, either initially or annually. However, if the district authorities have reasonable cause to believe that and employee has or is a carrier of a communicable disease, such individual may be required to submit to an appropriate medical examination at the expense of the District.

Employees may voluntarily choose to absent themselves from their position using the Board's other employment policies including sick leave or other appropriate leaves for any period during

which the employee's condition is infectious and/or communicable, provided that such absence is supported by a competent medical professional. If an employee has not voluntarily absented himself/herself during this time, his/her situation may be reviewed by a team consisting of:

- employee's physician
- physician selected by the District
- the employee
- the employee's immediate supervisor
- the Superintendent

This team shall make a recommendation to the Superintendent for employment or placement action.

#### **G.2.16-A Medical Examinations**

If there is a question as to the ability of a District employee to perform essential job-related function, the District may require a complete medical examination by a district appointed physician at the expense of the District. Such action may be taken to protect the health and safety of the employee, other employees, or the students while at the same time protecting the legitimate rights and interests of the employee. Such a medical examination will be considered job-related and consistent with business necessity, and therefore permissible, in the following situations:

- When an employee wishes to return to work following an absence due to illness or injury. An examination may be conducted to determine if the employee, with reasonable accommodation, can safely and effectively perform the essential functions of the job.
- When an employee requests an accommodation. If an employee requests an accommodation on the basis of a claimed disability, an examination may be conducted to determine if the employee is an "individual with a disability" to whom a duty of accommodation is owed and, if so, to help identify potential accommodations.
- When an employee is having difficulty performing the assigned job effectively, the District may require the employee to undergo a medical examination to determine if the performance problems are a result of an underlying medical condition.
- When the examination is required by law, medical examinations or monitoring are required under certain circumstances by regulations issued by the Department of transportation and Occupational Safety and Health Administration (OSHA).

The District may provide voluntary medical examinations or screenings as part of an employee health or wellness program. All information must be treated as confidential and kept in a confidential file separate from personnel files.

#### **G.2.16-B Food Service Workers**

The district shall follow the guidance of the U.S. Department of Health and Human Services concerning infectious and communicable diseases transmitted through the handling of food, and special precautions required for food service workers.

#### **G.2.16-C HIV/AIDS**

Current medical information indicates that HIV can be transmitted by sexual intercourse with an infected partner, by injection of infected blood products, and by transmission from an infected mother to her child *in utero* or during the birth process. None of the identified cases of HIV

infection in the United States are known to have been transmitted in a school setting or through any other casual person-to-person contact. There is no evidence that HIV is spread by sneezing, coughing, shaking hands, hugging, or sharing toilets, food, water, or utensils. According to best medical knowledge and judgments, the use of “universal precautions” and other procedures that implement this policy are sufficient to protect staff members and students from transmission of HIV at school.

#### **G.2.16-D Protective Precautions**

The body fluids of all people should be considered to contain potentially infectious agents. The term “body fluids” includes blood, semen, drainage from scrapes and cuts, feces, urine, vomit, respiratory secretions (nasal discharge), and saliva.

- When possible, avoid direct skin contact with body fluids. Disposable gloves are recommended when direct hand contact with body fluids is anticipated.
- When contact does occur, hands and other affected skin areas should be washed with soap and water.
- Proper hand washing requires the use of soap and water and vigorous washing under a stream of running water for approximately ten (10) seconds.
- Body fluid spills on hard surfaces shall be disinfected with bleach (diluted to ten [10] parts water and one [1] part bleach). Gloves shall be worn during cleanup.
- Disposable contaminated items shall be handled with gloves, put in a plastic bag, secured, and disposed of daily.
- Non-disposable equipment (dust pans, brooms, buckets, etc) shall be disinfected with the 10:1 bleach solution. Mops shall be soaked in the disinfectant after use and rinsed with hot water. The disinfectant solution shall be promptly disposed of down a drain pipe. Gloves shall be worn while disinfecting equipment.
- Clothing soaked with body fluids shall be washed separately from other items. If the material can be bleached, add one-half (1/2) cup of household bleach. If the material is not color-fast, add all fabric bleach to the wash.

*Adopted: December 2009*

#### **G.2.17 Workers’ Compensation**

All employees shall be covered by workers’ compensation insurance for any accident while on assignment, including any accident on school property or while on official business off school property. An employee must report any such accident, no matter how small, to the office immediately. A report on the time of the accident, persons involved, and how the accident happened is required (Appendix G-3). Failure to report could result in the loss of workers’ compensation benefits.

The Superintendent or designated agent, upon receiving a report, shall, within one (1) business day after notification, submit the Report of Industrial Injury to the insurance carrier.

#### **G.2.17-A Compensation Claims**

When a job-related injury/accident requires medical attention and absence from the workplace, the following conditions shall apply:

- The physician will be responsible for reporting the circumstances of the injury to the District, the Industrial Commission, and the District's insurance carrier.
- During the first seven (7) days of absence due to a job-related injury/accident, the employee will be placed on sick leave, provided the employee has accumulated sufficient sick leave.
- If a job-related injury/accident results in more than seven (7) days absence, the insurance carrier will be responsible for handling the claim for lost pay.

### **G.2.17-B Early Return to Work**

The District need only consider an early return when a job that can be performed by the early return employee is available. Creation of a position is not required.

When considering the early return assignment, the District should:

- Analyze the job and determine its purpose and essential functions.
- Consult with the employee to determine the precise job limitations imposed by the attending physician.
- Determine if the employee can perform the duties of the job.
- Analyze the risk of re-injury or deterioration of the employee's condition.

Adjustments in the job description for personal accommodations such as an amenity or convenience that is not job related shall not be the responsibility of the District. The District shall require that all aspects of the job description be performed adequately.

*Adopted: December 2009*

### **G.2.18 Staff Participation in Political Activities**

Employees have the right to engage in political activities. However, school time may not be used for political purposes. Staff members who intend to engage in political activities shall be guided by the following:

- No employee shall engage in political activities upon property under the jurisdiction of the Board unless permission has been granted for that purpose through a Use of Facilities request.
- Campaigning and other election activities must be done in off-duty hours when not working in an official capacity for the District, and without the participation of District employees or students acting in the capacity of District representatives.
- Invitations to participate in election activities on campus shall be extended to all candidates for the office.
- The use of District equipment, supplies, materials, buildings, or other resources to influence the outcome of any election is not permitted.
- Political circulars or petitions may not be distributed in school.
- The collection of campaign funds and/or the solicitation of campaign workers is prohibited at school.
- Employees of the District may not use the authority of their position to influence the vote or political activities of any subordinate employee.

The discussion and study of politics and political issues, when such discussion and study are appropriate to classroom studies, are not precluded under the provisions of this policy.

The policy shall apply only when an employee is serving as an agent of or working in an official capacity for the District.

*Adopted: December 2009*

### **G.2.19 Personnel Records and Files**

The Superintendent shall be responsible for the development and maintenance of appropriate personnel records. Personnel records of current and past applicants and employees shall be the property of the Capitan Municipal Schools. The records and their contents as utilized are defined as:

- ***Background and Service Record File:*** background information in regard to training, experience, references, fingerprint background check results, credentials, application form, person data, record of service within the District consisting of school and grade assignments or subjects taught each year, summer school assignments, copies of contracts, transfer requests, extended leave requests, letters of resignation, termination, information which shall indicated whether termination was by resignation or dismissal, payroll and payroll deduction information, and other information as required by state/federal regulations.
- ***Performance and Evaluation File:*** evaluations, professional development plans, growth plans, counseling statements, and formal accommodation letters from supervisor or Superintendent.
- ***Annual Performance File:*** may include lesson plans, observations, communications, and memos.
- ***Americans with Disabilities Act File:*** records related to medical conditions or disability shall be contained in the permanent, confidential file per federal regulations.

The Superintendent shall have custody of the Background and Service Record file, the Performance and Evaluation File, and the American with Disabilities File, and may delegate active control to a designee. The employee's immediate supervisor shall have custody of the Annual Performance File.

#### **G.2.19-A Access to Personnel Records**

A list of staff members designated by the Superintendent to access personnel folders will be posted by the personnel file cabinets and available for review in the office of the Superintendent. An Access Log will be maintained for individuals reviewing files for other than maintenance purposes. This log will include date, staff reviewing file, reason/purpose, and administrator/designee signature.

The District will protect the confidentiality of personal references, academic credentials, and other similar documents.

### **G.2.19-B Employee Review of Personnel Record**

Personnel records may be reviewed by employees upon reasonable notice. Staff may review the contents of their personnel files and receive copies of documents within reason.

Files will be reviewed with the employee and the Superintendent. If an employee feels that a document is inappropriate (excluding Performance and Evaluation file), the situation should be discussed with the Superintendent. If there is mutual agreement, specific documents may be removed from the file and destroyed. If mutual agreement cannot be reached the employee may submit a written response to the document and it will be attached to the document and placed in the file.

Counseling Statements will be placed in personnel files. These documents shall first be reviewed with the employee by their supervisor. The employee shall sign the document, acknowledging opportunity to review the document. Should a staff member refuse to sign, a witness will be called to write and sign a statement that the staff member was afforded the opportunity to review the document and refused to sign. The staff member may submit a written response to the document and it will be attached to the document and placed in the file.

Specific information contained in the record may be considered public information under the law and will be released in accordance with the Inspection of Public Records Act, Confidential Materials Act and Board policy.

*Adopted: December 2009*

### **G.2.20 Employment Recommendations**

Under current New Mexico law, an employer and individual employees may be held liable for having provided incomplete or misleading employment references or recommendations in regard to the current or former employees. Current employees of the District who provide a recommendation or reference for a current or former employee of the District may be mistakenly perceived as providing such reference or recommendation on behalf of the District.

#### **G.2.20-A Rules for Providing Employment References and Recommendations**

- No employee, unless with Superintendent approval, may issue or provide an employment reference or recommendation in his or her capacity as an employee of the District for a current or former employee orally – all such references or recommendations shall be in writing only.
- No employee may issue or provide an employment reference or recommendation in his or her capacity as an employee of the District for a current or former employee of the District without first:
  - Providing a copy of the proposed reference or recommendation to the Superintendent for approval.
  - Receiving the written authorization of the reference or recommendation provided.
- An employee who wishes to provide an employment reference or recommendation in his or her capacity only for a current or former employee of the District, without the



authorization or endorsement of the District, shall observe the following limitation and conditions:

- The reference or recommendation provided orally may not be provided during working hours or while on District premises, or through the use of a telephone or other communications media owned by the District.
- The reference or recommendation provided in writing may not be written during working hours or while on District premises or using any District or school letterhead or any communications media owned by the District.
- Any employee provided any such oral or written reference or recommendation shall specify in providing the reference or recommendation that he or she is speaking for himself or herself, and not on behalf of the Capitan Municipal Schools.

#### **G.2.20-B Investigation and Record-Keeping**

Upon receiving a copy of or a request for a proposed reference for a former employee, the Superintendent shall make appropriate inquiries about the former employee from former supervisors who worked with the employee while employed by the District. In approving the issuance of a recommendation on behalf of the district, the Superintendent shall ensure that the recommendation fairly reflects all relevant and reliable information bearing upon the former employee's competency, turpitude, and proper performance of duties.

The Superintendent shall keep and maintain copies of all proposed references or recommendations, copies of information compiled as to each, and the responses to each such proposed reference or recommendation.

#### **G.2.20-C Penalties**

Any violation of the provisions of this policy or any of its procedures by any employee shall subject the employee to discipline, including termination or discharge.

*Adopted: December 2009*

#### **G.2.21 Staff Grievances**

The purpose of this policy is to provide a procedure for the reporting and resolution of legitimate employment-related concerns of the employees at the earliest possible time and with the least possible expense, disruption and friction. Most personnel difficulties encountered by employees arise from a lack of communication. This procedure is designed to provide a formal mechanism for promoting or restoring such communication so that problems may be resolved before far more serious difficulties result.

##### **G.2.21-A Definitions and Limitations**

- "Grievant" shall mean an employee who is personally and directly affected by a condition for which he or she seeks a resolution.
- A "grievance" shall be an allegation by an employee that the treatment he or she has received from a supervisor is unfair or improper, or that there has been a violation, a misinterpretation or an inequitable application of Board policy, administrative rules, or

procedures, that directly and adversely affects the grievant. A single grievance may be submitted jointly by more than one grievant.

- "Resolution(s)" shall be the proposed written decision by the appropriate administrator(s), grievance review committee or Board, in response to the grievance.
- "Parties in interest" shall be the grievant and the supervisor or other employee(s) of the District whose conduct or actions are the subject of the grievance.

The following situations are not covered by this grievance procedure and are therefore *not* grievable under this policy:

- the discretionary act(s) of professional judgment relating to the evaluation of the work performance of any employee by his or her immediate supervisor;
- any personnel decision made by the Superintendent, including, but not limited to, a refusal to employ or reemploy, a discharge, a demotion, or any other action directly and adversely affecting the employment of an employee;
- situations in which the Superintendent and the Board of Education are without authority to act;
- situations in which the remedy for the alleged violation exclusively resides in some person, agency, or authority other than the Superintendent or the Board;
- situations as to which a different procedure or remedy has been provided by policy or procedure;
- situations as to which the procedure is prescribed by authority outside the organization; and
- situations involving a grievance by a contractor.

A grievance cannot be filed by a former employee after the effective date of the termination or discharge of employment.

#### **G.2.21-B General Requirements**

- A grievance must be initiated at Level 1, as provided in Section D, within five work days of the date upon which the grievant became aware of the circumstances which gave rise to the grievance.
- No persons shall suffer retaliation, recrimination, discrimination, harassment, or be otherwise adversely affected because of his or her use of this grievance procedure.
- Whenever possible, any grievance conference or hearing at any level shall be scheduled during a mutually convenient time that does not conflict with regularly scheduled duties.
- A grievant requiring the attendance and testimony of other employees shall have the right to bring such witnesses as are willing to testify in his or her behalf, and any necessary substitutes or released time shall be provided.
- A separate file shall be maintained for grievances. All documents produced during the processing of a grievance shall be filed therein. All parties shall maintain confidentiality with regard to the proceedings and the resolution of the grievance shall not be made public unless agreed to by the grievant and the Superintendent, or unless the grievant pursues the matter beyond this policy.
- Nothing contained herein shall be construed to limit in any way the ability of the District and the grievant to resolve any grievance by informal means, and nothing herein shall be construed as requiring resort to the formal procedures when grievable problems arise.

- A grievant may terminate the process at any level if he or she indicates in writing a desire to do so, accepts the resolution at that level, or fails to pursue his or her grievance by filing at the next level within the specified time limit.
- All grievances shall be filed and processed on grievance forms provided by the District. The time limits at any level may be extended by mutual agreement between the grievant, on one hand and the supervisor, Superintendent, review committee or Board on the other.
- Except as otherwise provided herein, unless a party can demonstrate prejudice arising from a departure from the procedures established in this policy, such departure shall be presumed to be harmless error.
- Meetings conferences and hearings conducted at each of the procedural steps shall be conducted confidentially and in private. Those present shall be limited to the parties in interest and the decision-making authority. Parties in interest shall present their positions themselves, and representation by third parties shall not be permitted.

#### **G.2.21-C Procedural Steps**

- ***Level 1 (Informal Conference)***

Prior to the filing of a formal written grievance, the grievant shall first discuss his or her grievance with his or her immediate supervisor in a good faith attempt to resolve the grievance prior to the filing of a formal grievance. In the case of a claim of sexual harassment or other unlawful harassment in which the grievant's supervisor is the subject of the claim, the grievant may initiate the grievance at the next supervisory level above that of the subject supervisor.

- ***Level 2 (Principal or Immediate Supervisor)***

If the grievant is not satisfied with the discussion and disposition of his or her grievance at Level 1, he or she may file a written grievance with his or her immediate supervisor within five (5) workdays of the disposition (Appendix G-4). The written grievance must include a description of the problem, a reference to the appropriate rule or policy that is alleged to have been violated, and the relief sought by the employee. The immediate supervisor shall communicate his or her proposed resolution in writing to the grievant within five workdays from the filing of the written grievance (Appendix G-5). Although no hearing or conference is required at this level, the immediate supervisor shall have the discretion to require a hearing or conference and gather such evidence prior to the preparation of the decision as he or she, in his or her discretion, feels would assist in any appropriate resolution of the grievance. The hearing or conference, if any, shall be as informal as possible and shall be conducted as the immediate supervisor, in his or her discretion, feels is appropriate for a full understanding of the grievance, the position of the grievant and the evidence supporting that position.

- ***Level 3 (Superintendent)***

If the grievant is not satisfied with the resolution of the grievance at Level 2, or if the supervisor fails to issue a proposed resolution within the time limit set forth above, the grievant may file the grievance with the Superintendent, within five (5) work days after the resolution was rendered or was due, if none was received (Appendix G-6). The Superintendent, or his or her designee, shall conduct a closed informal hearing with the parties in interest to the grievance within ten working days after receipt of the grievance.

The hearing by the Superintendent shall be as informal as possible and shall be conducted as he or she feels is appropriate for a full understanding of the grievance. The Superintendent shall have the right to ask any questions of the interested parties, as he or she deems necessary. Within ten workdays following the hearing, the Superintendent shall render his or her written proposed resolution to the grievant (Appendix G-7).

- ***Level 4 (Mediation)***

If the grievant is not satisfied with the resolution of the grievance at Level 3, or if the Superintendent fails to issue a proposed resolution within the specified time limit, the grievant may make a written appeal to the Superintendent within five (5) work days after the Superintendent's resolution was rendered or was due. A mediation session will be established between the grievant and a representative of the administration. The grievant and representative will have seven (7) workdays to develop satisfactory resolution. By mutual agreement, this time limit may be extended. Any proposed resolution needs to be approved by the Superintendent.

- ***Level 5 (Board of Education)***

If, after the completion of the above 4 levels, the grievant is not satisfied with the resolution of the grievance, he/she may file a written request to the Superintendent for a hearing with the Board of Education within five (5) work days after the completion of Level 4 (Appendix G-8).

The holding of a hearing by the Board is discretionary with the Board, and such a decision, shall be made by the Board at its next regularly scheduled meeting after receipt of the written request of a hearing. If the Board rules that it is appropriate to hear the grievance, it shall set the date for such hearing and the parties in interest shall be notified by the Superintendent. The parties in interest shall submit written statement of position, which shall be delivered to the board members at least five (5) work days prior to the hearing. In addition, any other documentary evidence requested to be reviewed by the Board shall be submitted at that time.

At its sole option, the Board may decide to summarily affirm the decision of the Superintendent, or to consider the appeal only on the basis of written submission of the parties in interest.

#### **G.2.22-D Conducting of Grievance Hearing by the Board of Education**

Since grievances are personnel matters, the hearing may be conducted in a closed session, if the grievant so requests and the Board votes to close the hearing. The grievant may request that the hearing be held in open session, in which case the hearing must be open.

- Each party in interest to the grievance shall have the opportunity to present oral statements limited to 30 minutes each. The presentation shall be limited to a review of evidence previously presented, unless the Board, in its discretion, allows new evidence to be presented during the hearing. Evidence may not be cross-examined by the other party in interest.
- The Board may make such inquiries of any party in interest, as it deems necessary or appropriate.

- The Board shall render a written decision within ten (10) calendar days. In arriving at its decision, the Board has complete discretion in fashioning such relief, if any, as it believes is appropriate, regardless of the relief requested.
- The decision of the Board is final unless otherwise provided for in statute.

*Adopted: December 2009*

### **G.3.0 Professional Staff Positions**

The District will attempt to activate a sufficient number of positions to accomplish the District's goals and objectives. Before the establishment of any new position, the Superintendent will present a job description for the position that specifies the qualifications and the performance responsibilities.

The Superintendent will maintain a comprehensive and up-to-date set of job descriptions of all positions in the school system.

*Adopted: December 2009*

### **G.3.1 Professional Staff Contracts and Compensation**

All employment contracts shall be in writing on forms approved by the Secretary of Public Education. These forms shall contain and specify the term of service, the salary to be paid, the method of payment, the causes for termination of the contract and other provisions required by the regulations of the Secretary of Public Education.

All employment contracts shall be for a period of one (1) school year except:

- contracts for less than one (1) school year are permitted to fill personnel vacancies which occur during the school year;
- contracts for the remainder of a school year are permitted to staff programs when the availability of funds for the programs is not known until after the beginning of the school year;
- contracts for less than one (1) school year are permitted to staff summer school programs and to staff federally funded programs in which the federally approved programs are specified to be conducted for less than one (1) school year;
- contracts not to exceed two (2) years are permitted for administrators in public schools who are engaged in administrative functions for more than one-half (1/2) of their employment time.

Except as provided in Section 22-10A-22 NMSA 1978, a person employed by contract pursuant to this section has no legitimate objective expectancy of re-employment, and no contract entered into pursuant to this section shall be construed as an implied promise of continued employment pursuant to a subsequent contract.

Salaries in the District will be differentiated in relationship to duties and responsibilities.

The Superintendent will provide recommendations on salaries and fringe benefits to the Board each year. After receipt of the Superintendent's recommendations, the Board will annually establish the salaries and benefits for all employees within the budgetary constraints of the District.

*Adopted: December 2009*

### **G.3.2 Professional Staff Salary Systems**

Prior to the beginning of each school year, the Superintendent shall file with the Public Education Department the District salary system, which incorporates any salary increases or compensation measures specifically mandated by the legislature. Salaries for teachers and school administrators shall be aligned with the licensure framework provided for in the School Personnel Act [Chapter 22, Article 10A NMSA 1978].

The Superintendent shall not reduce the District salary established above without the prior written approval of the Secretary of Education.

Any person who does not work the full term as set up by the salary system shall be paid on a prorated basis for the number of days to be worked for the remainder of the school year. This shall include school days taught plus the number of days required for orientation.

*Adopted: December 2009*

#### **G.3.2-A Credit for Teaching Experience**

- Full credit will be given for all teaching experience in all in-state or out-of state-accredited schools.
- Reported experience must be related to instruction and must be verified by use of a verification form, a W-2 form, or an in-district contract and evaluation form.
- Experience of less than one (1) school year but at least one day over the number of days in a school semester may be rounded to one (1) year provided the experience was gained in one position in one span of time, i.e., a series of unconnected experiences may not be combined. Capitan Municipal Schools will recognize the full year for salary increment purposes.

#### **G.3.2-B Credit for Military Service**

- Credit will be allowed on the salary schedule for active, full-time military service, not to exceed four (4) years. This is not intended to refer to National Guard, Reserves, R.O.T.C, or the like.

#### **G.3.2-C Credit for Course Work and Licensure Advancement**

- Each certified employee has sole responsibility for maintaining a valid and up-to-date teaching license in accordance with the requirements of the Professional Licensure Bureau of the New Mexico Public Education Department.

- Undergraduate and graduate credit hours earned before the bachelor's degree is completed may not be counted.
- Documentation (including dossier completion, certificate notification, and official transcripts) indicating advancement to the next licensure level and/or any completing coursework that will affect placement on the salary schedule must be presented to the administration office no later than September 1 of the current school year. Documentation received after this deadline will not be recognized for salary changes until the next contract year.
- All transcribed credit hours, either undergraduate or graduate, relating to education or those approved on the Professional Development Plan may be counted toward training on the salary schedule.
- Non-Education college courses considered must have prior approval by the Superintendent.
- Additional hours of credit are counted only after each academic degree is awarded.
- Additional hours added after the completion of one degree do not carry over after the completion of another degree.

*Adopted: December 2009*

### **G.3.3 Professional Staff Supplementary Pay/Extra Duty**

The Superintendent will recommend to the Board an extra-duty pay system for extra class activities that take place outside the regular contracted school day. This shall be reviewed each year for action.

All coaching schedules will be managed by the athletic director in accordance with New Mexico Activity Association (NMAA) guidelines. Head coaches, assistants, and volunteer coaches shall be licensed by the state of New Mexico. It is the responsibility of the employee to maintain a valid license and to obtain appropriate training for recertification.

*Adopted: December 2009*

### **G.3.4 Professional Staff Fringe Benefits**

The Board will review professional staff fringe benefits each year during the budget process and may modify the benefits to meet the best interest of the District.

Minimum standards of eligibility for benefits will be determined by the Board annually.

*Adopted: December 2009*

### **G.3.5 Official Business Leave for Certified and Support Staff**

#### **G.3.5-A Official Business Leave**

- Official Business leave shall be subject to the approval of the Principal and the Superintendent and availability of budget.

- Official Business leave involving out-of-state travel shall be subject to approval by the Board. Official Business leave involving out-of-state travel shall be submitted at least thirty (30) days prior to effective date of request.
- An employee is entitled to the benefits of travel and per diem meal reimbursement as provided by the Board for approved school business professional leave.

### **G.3.5-B Professional Education Association Leave**

- Professional education association leave shall be subject to the approval of the principal and the Superintendent.
- Those staff members elected or appointed to represent the Capitan Association of Classroom Teachers or other recognized professional education association shall be eligible for a maximum of three (3) days professional education association leave per year.
- Those staff members elected or appointed by their State or National professional education association to represent that association shall be eligible for a maximum of four (4) days professional education association leave per year.
- The Capitan Board of Education will pay the substitute up to and including the number of days permitted. Any days used over and above the total specified will be at the expense of the employee which is 1/154<sup>th</sup> of his/her contract.
- A staff member approved for professional education association leave shall not receive reimbursement for travel and meal per diem from the Capitan Municipal Schools.
- Professional education association leave days shall not accumulate from the prior year or years.

*Adopted: December 2009; Revised: February 2014*

### **G.3.6 Leave for Certified and Support Staff**

- Leave for district personnel is a designated amount of leave that is granted to a staff member. Regular employees are granted the number of hours each year equivalent to 10 working days. These hours may be used at the discretion of the employee.
- The employee wishing to take leave should apply through the established leave system at least three (3) work days prior to the date the leave and inform the principal of the leave request. (It is understood that a sudden illness would preclude this requirement.) The employee must notify the building secretary in order for arrangements to be made for a substitute.
- Employees may not take leave in order to work at another job. This would be considered additional employment interfering with performance of duties to the district.

#### **G.3.6-A Accumulation of Leave**

The Capitan Municipal Schools utilize a 4-day week. For this reason, accumulation and use of leave is based on hours rather than days. Unused leave may accumulate from year to year up to a maximum number of hours equal to one-half (1/2) the number of hours in the employee's annual contract. No more leave can be accumulated once the maximum is reached. As accumulated leave time is used and drops below the maximum, the employee may again accumulate leave hours up to the maximum limit.



Employees will earn leave at the following rate:

- 1762.5 hour contract – 9.375 hours/month (12 month employees) up to 881.25 hours
- 1747.5 hour contract – 9.375 hours/month (12 month custodian) up to 873.75 hours
- 1566 hour contract – 9 hours/month (HS/MS office personnel) up to 783 hours
- 1494 hour contract – 9 hours/month (Elementary office personnel) up to 747 hours
- 1386 hour contract – 9 hours/month (Certified Staff) up to 693 hours
- 1192 hour contract – 8 hours/month (Educational Assistants) up to 596 hours

Hours earned each month will be credited on the 30<sup>th</sup> of each month except for August which will be credited on the first day of school each school year.

First year employees with the District shall be provided one-half (1/2) of available leave on their first contract day. The other half of allowed leave shall be awarded on the first day of the second semester of the school year. Following the first year of service, the employee shall accrue leave as designated above.

#### **G.3.6-B Use of Leave**

- Leave is discouraged during the first 2 weeks of school, the last 2 weeks of school or the 2 days immediately prior to or following a holiday or break. Should an employee need to take leave during this time, a letter must be submitted to the Superintendent providing explanation for the leave. The Superintendent will approve or disapprove the leave.
- Leave should not be taken during in-service days, Parent/Teacher Conference days or testing time. Leave during this time can be approved following a conference with the building principal who will inform the Superintendent of the employee's leave approval or disapproval.

#### **G.3.6-C Educational Leave**

Certified employees may take one (1) day for educational leave to take final written or oral exams to complete an advanced degree. This is in addition to the annual Leave granted employees.

#### **G.3.6-D Compensation for Accumulated Leave/Longevity Incentive**

Any employee who has accumulated hours of leave equal to 80% of his/her maximum allowable accumulation when they resign or retire from the District shall be eligible for compensation at the rate of \$1.50/hour for each hour of unused leave. The rates are:

- 881.25 hours of eligible accumulation must have 705 hours of earned leave
- 873.75 hours of eligible accumulation must have 699 hours of earned leave
- 783 hours of eligible accumulation must have 626.5 hours of earned leave
- 747 hours of eligible accumulation must have 597.6 hours of earned leave
- 693 hours of eligible accumulation must have 554 hours of earned leave
- 596 hours of eligible accumulation must have 477 hours of earned leave

Employees entitled to vacation time when resigning or retiring will be paid for unused vacation time. However, an equivalent number of hours of leave eligible for the Longevity Incentive will be deducted.

Employees who are terminated or discharged from the District are not eligible for this Compensation.

Payment will be made with the employee's final paycheck.

Employees shall not be paid for hours donated to the Sick Leave Bank.

**Please note:**

**This policy will be implemented beginning July 1, 2014. Until that time, existing Board Policy shall remain in effect.**

**Employees who have accumulated leave hours in excess of the maximum allowed by this policy on June 30, 2014 will be offered a one (1) time payment of \$1.50/hour for this excess time in order to bring the employee to the maximum allowed level. The employee is not required to take this payment. The number of hours accrued then become the maximum allowed for that employee.**

*Adopted: December 2009; Revised: February 2014; Revised June 2014*

### **G.3.7 Absent Without Leave**

An employee shall be deemed "absent without leave" when there is a failure to report to work without prior notification to the building Principal or Superintendent.

In no case shall an employee be compensated while absent without leave. An employee who is absent from work without prior approval is subject to disciplinary action, as is one who was unable to obtain prior approval due to unusual circumstances and such approval is denied upon the employee's return.

*Adopted: December 2009; Revised: February 2014*

### **G.3.8 Professional/Support Staff Leave Without Pay**

In the case of prolonged illness of an employee or extenuating circumstances that may arise which necessitate a prolonged absence from duty, the employee may be placed on leave without pay until he/she is able to return to work. To address such situations, a leave of absence, without pay, may be granted for not longer than one (1) year. Situations that may warrant this leave may include, but is not limited to:

- An employee pursuing additional education that relates to the employee's primary assignment. A plan of contemplated course work must be presented.

- To provide for an unpaid leave in a situation where the employee will be absent from work and will exceed the maximum number of days of accumulated leave.
- An employee fails to report to work without prior notification to the Superintendent.
- A leave that benefits or is the best interest of the District, as determined by the Board upon review of the application.
- Leave under the Family and Medical leave Act.

A leave of absence requested pursuant to this policy may be approved by the Superintendent if such leave of absence is justified.

A request for leave of absence shall not be denied by the District if the employee is entitled to leave under the Family and Medical Leave Act. All other applications for leave of absence may be granted or denied by the District in its sole discretion.

Each request for such a leave of absence shall be in a written application stating the purpose, stating date, and duration of the leave of absence, the reasons for its necessity or desirability, and any other information the applicant deems relevant to the request (Appendix G-9).

The leave of absence shall be only for the purpose and duration approved and may not be extended without written approval by the District. During the period of leave, the District will maintain for the employee under the District coverage group health plan if enrolled; however, the employee is responsible for continuing to pay the employee's monthly portion of the premium. If an employee fails to make payment of the employee's share of health insurance premiums for 30 days after such payment is due, coverage of such employee for benefits shall be discontinued.

If it is concluded that there is no position available to which the person on leave can return, the Superintendent shall inform the party that no position is available. The party does not have a right to hearing or other due process in this situation. The party shall be informed of this lack of position prior to the end of the leave of absence. The determination as to whether there is a position available is within the sole discretion of the District. However, the Superintendent will make a good faith effort to place the person granted leave in the same position he/she held prior to the leave or in another available position for which he/she is qualified.

All rights of continuing status (licensed teachers only), retirement, salary increments, and other benefits shall be restored at the level earned when the leave was granted. All accrued sick, family, vacation, and other paid leave shall have been applied to the leave period unless otherwise agreed to by the District or prohibited by the Family and Medical Leave Act.

A licensed teacher shall be selected to fill the vacancy of a teacher who will be gone for an extended period of time if available.

Employees will not accrue leave or other benefits during the leave period.

*Adopted: December 2009*

### **G.3.9 Family and Medical Leave Act**

The District shall fully comply with the Family and Medical Leave Act (FMLA) and all interim and final regulations interpreting the FMLA issued by the U.S. Department of Labor. Accordingly, all portions of this policy that pertain to the FMLA shall be interpreted in a manner consistent with the FMLA and its regulations. In the event of any conflict between the provisions of this or any other leave policy of the District and the provisions of the FMLA, the latter shall prevail.

An employee requesting leave shall submit a “Family and Medical Leave Request” form to the Superintendent through their Principal/Supervisor (Appendix G-10).

Subject to the conditions set forth herein, any eligible employee of the District may take up to twelve (12) weeks of leave (FMLA leave) in a “rolling” twelve (12) month period measured backward for each employee from the first time such employee uses leave under FMLA without pay, for any one (1) or more of the following reasons:

- childbirth and infant care;
- placement of a child with the employee for adoption or placement of a child with the employee by a state agency for foster care (entitlement to leave for birth or placement of a child expires 12 months after the birth of placement of the child);
- care of the employee’s spouse, son or daughter or parent with a serious health condition; and
- the inability of the employee to perform his or her job duties due to his or her own serious health condition, or the necessary absence from work of an employee to receive medically necessary treatment.
- Any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

A “**serious health condition**” is an illness, injury, impairment, or physical or mental condition that (a) requires in-patient care in a hospital, hospice, or residential medical care facility, or (b) requires continuing treatment by a health care provider and which, if left untreated, would likely result in an absence from work or more than three days, or (c) involves pre-natal care. A “serious health condition” does not include voluntary cosmetic treatments, unless inpatient care is required or routine physical examinations.

### **G.3.9-A Special Conditions**

Entitlement to leave for the birth of a child or the placement of a child for adoption or foster care ends at the expiration of a twelve (12) month period, beginning on the date of the event. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of twenty six (26) workweeks of leave during a twelve (12) month period to care for the service member. The leave described to care for a covered Service member shall only be available during a single twelve (12) month period.

A husband and wife working for the District may be limited to a total of twelve (12) weeks of leave during each fiscal year for leave for the birth of a child or the placement of a child for

adoption or foster care and to care for an employee's parent with a serious health condition. However, for other covered leaves, such as to care for a spouse or child, or for treatment of the employee's own serious health condition, each spouse may take up to 12 weeks a year.

The aggregate number of workweeks of leave to which both the husband and wife may be entitled under covered service member family leave combined with leave as described in the previous sentence shall be limited to twenty six (26) workweeks during only one (1) twelve (12) month period.

The District shall not require an employee to substitute accrued Sick/Family leave for FMLA leave used by reason of a birth, adoption, or foster placement. An employee shall substitute accrued vacation leave for FMLA leave used for such unless otherwise agreed to by the District. In any other circumstance an employee's accrued vacation, Sick/Family, or other applicable leave shall be substituted for FMLA leave, to the extent available by policy unless otherwise agreed to by the District.

### **G.3.9-B Notice**

An employee seeking leave for a foreseeable reason such as the birth or placement of a child or for planned medical treatment shall provide the district with at least 30 days advance notice of the leave. If 30 days advance notice is not possible under the circumstances, e.g. in the case of a premature birth, the employee shall give such notice as is practicable, e.g. within one or two business days of the day the employee learns of the need for leave. If an employee's reason for seeking leave was unforeseeable, such employee shall give such notice as is practicable. An employee who fails to give notice of leave as required herein may be denied such leave until the notice requirements are met. If less than 30 days notice of leave is provided, the employee must schedule an appointment with the Superintendent for approval.

An employee requesting leave for treatment of an employee's serious medical condition or for that of a child, parent, or spouse, the employee must make a reasonable effort to schedule the treatment at a time that is not unduly disruptive to the District.

### **G.3.9-C Certification**

All FMLA leave shall be supported by medical certification provided by the employee's health provider. The medical certification should accompany the request for leave submitted 30 days prior to the start of the leave date. If this is not possible the medical certificate should be provided within fifteen (15) days after the FMLA commences.

An employee seeking leave on the basis of the serious medical condition of the employee or the employee's spouse, son or daughter, or parent, must provide certification issued by the health care provider of the employee or of the employee's spouse, son or daughter, or parent, stating

- the date the condition began,
- its probable duration,
- appropriate medical facts, and
- that, for a specified time, either
- the employee is unable to perform his or her job functions or will be unavailable to do so while receiving necessary medical treatment, or

- the employee will be needed to care for the sick family member.

If the adequacy of medical certification is questioned by the District, the District may require the employee to seek the opinion of a second health care provider, who is not regularly employed by the District, at the District's expense. If the opinions of the first and second health care providers differ, the District may require the employee to obtain a third opinion at the District's expense, from a health care provider agreed upon by the employee and the District. The third opinion shall be final and binding.

Certification of active military duty or call to active duty in support of a contingency operation for purpose of receiving family leave shall be required under the same conditions as FMLA certification for leave indicated above.

### **G.3.9-D Intermittent or Reduced Time Leave**

FMLA leave may be taken intermittently or on a reduced leave schedule under the following circumstances:

- If medically necessary to care for a family member or for the employee's own serious health condition; or
- Because of any qualifying exigency the spouse, or a son, daughter, or parent, of the employee is on active duty, or notified of an impending call or order to active duty in support of a contingency operation; or
- If approved by the District.

The District may, for the term of the leave, transfer the employee to an alternative position with equivalent pay and benefits.

If an eligible "instructional employee" seeks intermittent leave or reduced-schedule leave for the care of a spouse, son or daughter, or parent, or for the employee's own serious health condition, and the leave is foreseeable on the basis of planned medical treatment, and the employee would be on leave for more than 20 percent of the work days during the period, the employee must choose either to:

- Take leave for a period or periods of a particular length, not greater than the length of the planned medical treatment; or
- Transfer temporarily to an equivalent position which better accommodates recurring periods of leave.

"Instructional employees" include teachers, instructional assistants, coaches, and other employees whose duties principally involve the direct provision of instructional services to students

If any employee request intermittent leave or leave on a reduced work schedule to care for a seriously ill family member or for the employee's own serious health condition, and the need for leave is foreseeable based upon planned medical treatment, the employee may temporarily be transferred to an available alternative position with equivalent pay and benefits, if the employee is qualified for the position and the position better accommodates recurring periods of leave than the employee's regular job.

### **G.3.9-E Special End of Semester Circumstances for Instructional Employees**

Under the following conditions, leave for an instructional employee may be required to continue to the end of the academic semester:

- Leave begins more than five (5) weeks before the end of a semester, the leave is of at least three (3) weeks duration and return to employment would occur during the last three (3) weeks of the semester.
- Leave other than for the employee's serious health condition begins five (5) weeks or less before the end of a semester, leave is greater than two (2) weeks duration, and return to employment would occur during the last two (2) weeks of the semester.
- Leave other than for the employee's serious health condition begins three (3) weeks or less before the end of a semester and leave exceeds five (5) working days.

### **G.3.9-F Employee Notification**

All requests for leave must be approved by the employee's supervisor and the Superintendent. Any employee seeking leave shall explain the reasons for the needed leave on forms provided by the District. It shall be the District's responsibility to identify the requested leave as covered by the FMLA and as paid or unpaid on the basis of leave time accrued under other District leave policies. Such identification shall be made at the time leave is requested or during such leave, on the basis of information provided by the employee. With each request for FMLA leave, the employee shall be notified:

- About FMLA and the expectations, obligations, and consequences of taking FMLA leave per 29 C.F.R 825.301 of FMLA
- That FMLA leave may be withheld until a requested notice is provided or the time frame is met.
- That leave is granted to an employee who is unable to perform the work required, restoration may be denied until the employee has complied with the request to provide medical certification of ability to return to work.

See Appendix G-11 for Employer Response to Employee Request for FMLA. Notice of Rights under FMLA Act of 1993 and other FMLA notices is found in Appendix G-12, G-13, G-14, and G-15.

The District will post notices in each school building on the District premises that provide a summary of FMLA and information on how to file a charge for any FMLA violation.

### **G.3.9-G Health Care Continuation**

An employee qualifying for and taking FMLA leave shall be entitled to have the health care plan in which the employee is participating continue under the same terms and conditions applicable to actively working employees.

If an employee fails to return to work at the end of the leave period, the employee shall be required to reimburse the District for the cost of health insurance premiums the District paid to maintain coverage for the employee during the leave period unless the employee fails to return to work following leave under the FMLA for a reason listed below:

- the continuation of the FMLA qualifying circumstances upon which the need for leave was originally based, or
- circumstances beyond the control of the employee,

### **G.3.9-H Position Restoration**

Upon return from FMLA leave, an employee other than a “key employee,” will be restored to his/her previous position or to a position of equivalent pay, benefit, and other terms and conditions of employment. The District requires an employee to provide a medical certificate from a health care provider that the employee is able to resume work before returning from FMLA leave for a serious personal health condition. The District may delay the return of an instructional employee from FMLA leave at the end of a semester. Equivalency of positions shall be determined on the basis of District policy. A “key employee” may be denied reinstatement if it would create a substantial and grievous economic injury for the District. A “key employee” is one whose compensation is within the highest 10 percent of the work force of the District.

*Adopted: December 2009*

### **G.3.10 Sick Leave Bank**

Employees will be provided the opportunity for extended sick leave. The Capitan Municipal Schools will establish and operate a Sick Leave Bank for catastrophic, unexpected critical illness or surgery that could not be delayed until summer vacation. The Superintendent shall cause guidelines for the operation of the Sick Leave Bank to be developed and submitted to the Board for approval. Changes in the guidelines shall follow established administrative procedures. Should the Bank ever be discontinued by Board action, available leave hours shall be disbursed to the then current members on a pro-rata basis.

#### **G.3.10-A Rules and Regulations For CMS Sick Leave Bank**

- The Capitan Municipal Schools Sick Leave Bank (SLB) has been established by the Capitan Board of Education to provide extended leave for its employees (certified and non-certified), who have a catastrophic illness or injury that requires extended hospitalization and/or home confinement. A catastrophic illness is defined as a sudden, unforeseeable great loss, suffering, or damage to an individual. Extended hospitalization or home confinement shall be defined as any period requiring the employee to be absent from work for the hourly time equivalent of 12 days of work.
- This leave is for the employee’s illness or for the employee to provide care for a spouse or child when the criteria meet the extended hospitalization and/or home confinement requirements stated above. The SLB may consider other family relationships if the employee is the caregiver for the family member.
- Participation is on a voluntary basis. To be eligible the employee must voluntarily contribute one (1) day of accrued leave hours to the SLB. Employees may make a contribution to the SLB only during the period of open enrollment each year. This period



occurs only during the first thirty (30) school calendar days of each year. Donated day(s) are nonrefundable. If a person leaves the District, they may contribute their remaining accrued leave hours to the SLB. Hours donated to SLB are not eligible for payment under the Longevity Incentive.

- Initially, the Capitan Board of Education will contribute 810 hours. The SLB is to be built to a minimum of 1386 hours. Should the number of days hours in the bank at the end of each school year be fewer than 1386 hours each member will be required to donate one (1) day (9 hours) accrued leave for the following year in order to maintain eligibility.
- A request to withdraw from eligibility of the SLB program must be made during the open enrollment period. The request must be submitted in writing.
- Requests for hours from the SLB will be determined by a SLB Committee consisting of the administrator that immediately supervises the applicant, one (1) certified staff member from each building, the school nurse, and one (1) non-certified staff member. Each member of the SLB Committee must belong to the SLB program.
- Requests to draw from the SLB must be submitted in writing ten (10) days prior to the starting date. The request is to be submitted to the SLB Committee along with a statement from a licensed physician, stating the reason for the extended leave, and the anticipated date of return to work. All leave records of the employee applicant will be submitted to the SLB Committee at that time. The SLB Committee may request and designate a second medical opinion, at the School District's expense. A maximum of hours equivalent to 52 days of leave may be requested from the SLB. The Committee will specify the actual amount granted. If less than 52 days worth of hours are approved, the applicant may reapply for the balance. Documentation as to the additional need must be submitted. If all hours granted are not used, the unused portion will revert back to the Bank.
- All accrued annual leave and vacation (when applicable) must be used before an employee is eligible to receive hours from the SLB. The catastrophic illness or injury must be current. The SLB is applicable from the time the application is received. Staff members on leave of absence are not eligible to participate in the SLB.
- Leave and vacation hours will not accrue while an employee is not working and using SLB days.
- Maximum individual allowed participation in the SLB will be limited to hours equivalent to 52 days for particular illness or injury including related problems. The committee may only grant a total of hours equivalent to 154 days per school calendar year.
- Catastrophic illness or injury may be defined to exclude recurring or congenital conditions which would leave an employee unable to fulfill his/her contractual obligations on a continual basis.

- The SLB is not for double reimbursement to the employee. If the employee receives another form of reimbursement such as a liability/lawsuit award, disability, workers' compensation, etc.; the employee agrees to repay the school district for the days awarded from the SLB at the employee's compensated daily rate.
- The employee does not have to reimburse the SLB for granted days from future accrued leave hours.
- Maternity leave is not a catastrophic illness and as such extended leave days cannot be requested from the Bank. Complications from the birth of a child necessitating extended leave may be considered by the Committee when accompanied by a physician statement.
- All time that exceeds accrued annual leave will be unpaid leave should the employee not qualify for SLB assistance.

*Adopted: December 2009; Revised: February 2014*

### **G.3.11 Other Leave**

#### **G.3.11-A Court Leave/Jury Duty**

Court leave will be granted to an employee to respond to a legal subpoena which requires his/her absence from duty if such absence is school related. An amount equal to any compensation above and beyond expenses incurred for this service will be deducted from regular pay.

Court leave will be granted to employees who are summoned to jury duty. A substitute will be provided, if needed, by the District. An employee excused from jury duty after being summoned shall report back to school for regular duty as soon as possible. Failure to report for duty will result in a deduction equal to that portion of a contract day missed.

No court leave shall be granted to an employee whose absence is caused by taking legal action against the Capitan Board of Education.

#### **G.3.11-B Military Leave**

An employee who is a member of the uniformed service may use any vacation leave or other accumulated paid time off during their service, or may take unpaid leave of absence. Employee members of organized units of the Army or Air National Guard or Army, Air Force, Navy, Marines, or Coast Guard Reserves shall be given leave not to exceed fifteen (15) working days military leave with pay per federal fiscal year when they are ordered to duty for training.

The District must re-employ uniformed service members, as defined in 38 U.S.C 4303, returning from a period of service, if the service member:

- Was employed by the District
- Gave the District notice that he or she was leaving the job for service in the uniformed services, unless giving notice was precluded by military necessity or otherwise impossible or unreasonable.
- Has a cumulative period of service in the uniformed services not exceeding five (5) years.

- Was not released from service under dishonorable or other punitive conditions.
- Has reported back to the District in a timely manner or has submitted a timely application for re-employment in accordance with the Uniformed Services Employment and Re-employment Rights Act.

**G.3.11-C Inclement Weather Absence**

If snow or dangerous road conditions cause a delay in the beginning of the school day, employees will be required to report for duty at the direction of the Superintendent. Each employee should complete a sheet and have it on file in his/her school’s business office of how he/she intends to make up hours in case of a delay or cancellation.

If the buses run and an employee is unable to get to school, it will be charged as a leave day.

*Adopted: December 2009; Revised February 2014*

**G.3.12 Staff Vacations and Holidays Employees**

**Vacation**

Personnel employed on a twelve (12) month contract earn vacation time according to the following schedule:

- 1 –9 years                      75 hours
- 10 or more years            112.5 hours

Vacation time must be taken by the end of winter break following the school year it was earned. Vacation time may not be accumulated. Vacation time not taken by the end of the winter break will be cancelled. If an emergency arises at school that should prevent an employee from using this vacation time, the employee may get approval from the Superintendent for an extension.

An employee who terminates employment at the end of a contract year should try to use up all accrued vacation days. If this is not possible, the employee shall meet with the Superintendent to explain why the vacation days could not be taken. Upon approval by the Superintendent, the employee will be paid for accrued vacation days based on their daily rate.

Leave requests for vacation time should be made at least one (1) week in advance. A request may be disapproved if numerous employees have requested the same dates for leave and approval would create a hardship on the District.

Employees that work less than twelve months do not earn vacation time. Their work days are designated by the school calendar.

**Holidays**

Twelve month employees work all days designated by the Superintendent except:

- July 4<sup>th</sup>
- Labor Day (unless school is in session)
- Thanksgiving Day
- Christmas Day
- New Year’s Day

Memorial Day

Other holiday non-work days will be determined by the Superintendent and established in a school calendar for 12 month employees.

Holidays for other employees are designated on the adopted school calendar.

*Adopted: December 2009; Revised June 2014*

#### **G.4 Posting of Vacancies**

A Notice of Vacancy shall be completed by the Superintendent or the Superintendent's designee when there is a vacancy to be filled. This notice shall include:

- posting date
- position
- qualifications
- responsibilities
- contract period
- start date
- application process
- application deadline
- The following statement:

*The Capitan Municipal School District does not discriminate on the basis of race, color, national origin, sex, religion, age and handicap/disability in employment or the provision of services.*

The application deadline shall be at least two (2) calendar weeks following the posting date and no assignment to fill a vacancy shall be made until after the application deadline.

The Notice of Vacancy during a school year shall be posted on the Capitan Municipal Schools website, posted at all school sites, e-mailed to staff, and posted on the Administration Office bulletin board. The Superintendent may also elect to post the notice in newspapers of general circulation and post the notice on available community bulletin boards.

During the summer recess, the District will post vacancies on the administrative offices bulletin board, the school web site, and papers of general circulation should the Superintendent elect to do so.

*Adopted: December 2009*

##### **G.4.1 Hiring of Professional Staff**

It shall be the policy of the Capitan Municipal School District to select the best qualified applicant without regard to race, color, religion/creed, sex, disability/handicap, or national origin, nor will any staff member be denied consideration for promotion because of age or marital status. The following general criteria shall also be used in the selection process:

- A candidate for secondary school teaching should have a major, minor, or equivalent in the candidate's teaching field.
- An elementary school candidate should have a major or equivalent in elementary education or in the special area of assignment.
- Candidates for all teaching positions shall be highly qualified per the NCLB regulations.
- Each candidate shall provide evidence of meeting state requirements for certification.
- Each candidate shall be requested to complete a consent-and-release form regarding conducting of a background investigation. This background investigation shall consist of communication with the applicant's former employer(s) and/or references that concerns education, training, experience, qualifications and job performance for the purpose of evaluation for employment. This background investigation does not include the results of any state or federal criminal history records check.

Any employee's misstatement of fact that is material to qualifications for employment or the determination of salary shall be considered by the Board to constitute grounds for dismissal.

All offers of employment are contingent upon the satisfactory completion of background investigations.

A person not directly involved in the employment decision affecting the specific applicant shall not be permitted unauthorized access to criminal history record information or background information.

It shall be the responsibility of the Superintendent to see that persons recommended for employment have met all qualifications as required by State regulations for the types of positions for which they have been employed.

See Appendix G-16 for forms relating to background checks.

*Adopted: December 2009*

#### **G.4.2 Fingerprinting Requirements**

All personnel to be hired by the District who have not been subject to a criminal background check within the last 24 months will be subject to a criminal background investigation, including mandatory fingerprinting, at the candidate's expense as a condition of further consideration for employment.

Any offer of employment is contingent upon the satisfactory completion of all background investigations.

Criminal convictions shall not automatically bar an applicant from obtaining employment with the Capitan Municipal School District, but pursuant to the Criminal Offender Act, NMSA 1978, Sections 28-2-4 and 28-2-5, may be the basis for refusing employment.

Criminal background checks, as described above, shall also be conducted upon each contractor or contractor's employee, at the expense of the contractor or contractor's employee, if the contractor or contractor's employee has unsupervised access to students. In such cases, contracts shall be subject to the satisfactory completion of background checks.

With regard to existing employees, the District may conduct equivalent background investigations if the District becomes aware of facts, circumstances or conduct giving rise to a reasonable suspicion that the employee has a history which, if substantiated, may adversely affect on his/her fitness to continue in employment with the District. The Superintendent shall report to the Public Education Department any known conviction of a felony or misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the employee.

*Adopted: December 2009*

### **G.4.3 Temporary Instructional Personnel/Substitute Teachers**

#### **G.4.3-A Qualifications for Substitute Licensure and Employment**

Substitute teachers shall possess a Social Security card, pass the background investigation, and complete the application process. Candidates for substitute teaching must also be at least 18 years of age, possess a high school diploma or high school diploma equivalency, and hold a current New Mexico Substitute Teachers License by meeting all requirements as set forth by the New Mexico Public Education Department.

As a condition of employment with the District as a substitute teacher, every applicant must initially submit to and be cleared by a finger-print based criminal history and background check pursuant to state law and regulation. No applicant for initial licensure and/or employment shall be employed by the District until a background check has been reviewed and cleared by the Public Education Department.

#### **G.4.3-B Compensation of Substitute Teachers**

##### **Short-term Substitutes**

Substitute teachers shall be paid an amount as set by the Capitan Board of Education that shall at least meet minimum wage requirements.

##### **Long-term Substitutes**

A substitute position that requires more than two (2) weeks continuous assignment in that position shall be considered a long term substitute position. Such a position assumes greater responsibility for planning and delivery of instruction. The Superintendent shall establish compensation commensurate with the added level of responsibility for a long term substitute position. The District should strive to place a certified teacher in any long term substitute position when possible.

Substitute teachers are not entitled to any of the benefits accruing to the regular employees of the Capitan Municipal Schools.

#### **G.4.3-C Selection of Substitute Teachers**

A list of substitute teachers available for assignment shall be maintained in the administrative office. The building Principal/Principal designee is delegated the authority to employ substitute teachers as needed from the approved list. The individual teacher does not have this authority.

It shall be the responsibility of the teacher to notify the building principal/principal designee as soon as possible of the need for a substitute teacher. If the teacher knows in advance that a return to duty will be assured on a certain day, the Principal/Principal designee should be so notified in order that the substitute may be informed.

Regular teachers should address concerns about substitute teacher performance with the building Principal.

#### **G.4.3-D Exceptions**

No person holding a current, valid New Mexico teaching or administrative license is required to obtain substitute teacher licensure in order to perform instructional services in accordance with state regulation.

*Adopted: December 2009; Revised: February 2014*

#### **G.4.4 Professional Staff Orientation and Training**

The Superintendent will establish a program to provide orientation for all new District employees. This training shall include, but is not limited to:

- Goals, objectives, and programs of the District.
- Personnel policies.
- Terms of employment.
- General disciplinary rules and procedures.
- Salary and fringe benefit plans.
- The evaluation program and name(s) of evaluator(s).
- Blood borne pathogen training.
- Child abuse reporting responsibilities.
- FERPA training.

*Adopted: December 2009*

#### **G.4.5 Professional Staff Development**

The Board recognizes its responsibility to provide opportunity for the continual professional growth of its licensed certificated staff. Such opportunities, within budgetary limitation, include in-service training courses, workshops, visitations to other schools, conferences, professional library access, and assistance from supervisors and consultants.

The Board encourages educational research by staff members when the conduct of the project does not conflict with the major functions of the individual school or District.

The Superintendent may establish local in-service training courses for teachers and other licensed employees in the District.

The District will pay the cost of tuition and fees incurred in connection with any courses, workshops, seminars, conferences, in-service training sessions or other such programs which an employee is required or requested to take by the District.

*Adopted: December 2009*

#### **G.4.6 Professional Staff Schedules**

All professional staff members shall report to their duty stations on time each workday and shall, as scheduled, be available there until the designated time(s) they are scheduled to leave. Licensed teachers shall have a duty free lunch of at least 30 minutes. The Superintendent or building Principal may alter or extend the school day for meetings, special events, and activities.

Classroom teachers will, in addition to their lunch period, have daily preparation time during which they will not be assigned additional regular duties as follows:

- Elementary School – not less than an average of forty-five (45) minutes inclusive of before and after school.
- Middle School and High School – not less than one (1) regular class period.

In some circumstances, a teacher may be asked to cover a class for a teacher during his/her preparation time. This is not considered the assignment of an additional regular duty.

In order to ensure the safety of students and the security of school campuses, teachers may be assigned supervisory duty during the teaching day. These duty assignments shall be considered a regular part of a teacher's duties and shall be fulfilled accordingly.

*Adopted: December 2009*

#### **G.4.7 Professional Staff Meetings**

The Superintendent will arrange for and hold staff meetings as the need may arise. This authority may be delegated to the school principals, who may hold such building meetings on a regularly scheduled basis or on an as needed basis.

After school meetings should begin no later than fifteen (15) minutes after the student dismissal time.

All teachers are required to attend such meetings unless officially excused by the principal or the Superintendent prior to the meetings.

*Adopted*



#### **G.4.8 Evaluation of Licensed Staff**

The Capitan Municipal Schools Board of Education is committed to continuous improvement of staff performance and student achievement. The Capitan Municipal Schools Comprehensive Performance Evaluation System Handbook has been developed in accordance with all Public Education Department regulations and New Mexico State Statutes including HB 212 (New Mexico Three-Tiered Licensure System), New Mexico State Statute 22/10A-4.B (New Mexico Licensure Framework, and Public Education Department Regulation 6.69.4 (Performance Evaluation system Requirements for Teachers, Highly Objective Uniform Statewide Standard of Evaluation – HOUSSE). Procedures, guidelines, and forms reflect the state mandates described above. The evaluation system shall meet regulations and rules set forth by the New Mexico State Legislature and the New Mexico Public Education Department.

*Adopted: December 2009; Revised: February 2014*

#### **G.4.9 Evaluation of Principals**

The Principals shall be evaluated annually by the Superintendent. In evaluating the Principals, the Superintendent will follow procedures established by the Highly Objective Uniform Statewide Standard of Evaluations (HOUSSE) for Principals and Assistant Principals. Additionally, the Principal's respective staff shall be requested to evaluate the Principal's performance and these evaluations will be supplied to the Superintendent for consideration in the final evaluation of the Principal.

The salary of the Principals shall be approved by the Board of Education and shall, at the least, follow state regulations regarding salaries for school administrators.

*Adopted: December 2009*

#### **G.5.0 Resignation of Professional Staff Members**

Professional employees shall give thirty (30) calendar days written notice of intention to resign or request a release from contract. An earlier release from an uncompleted contract may be granted contingent upon the availability of a well-qualified, licensed teacher as a replacement.

Each licensed teaching employee shall deliver an acceptance or rejection of re-employment to the superintendent within fifteen (15) days from the following:

- The date written notice of re-employment is served upon the person; or
- The last day of the school year when no written notice of re-employment or termination is served upon the person on or before the last day of the school year.

A teacher who resigns contrary to this policy shall be deemed to have committed an unprofessional act and shall be subject to the penalty as provided under New Mexico statutes and Secretary of Public Education regulations.

*Adopted: December 2009*

#### **G.5.1 Reduction in Force (RIF) of Professional Staff Members**

The number and type of licensed staff positions required to implement the District's educational program will be determined annually by the Board after recommendation from the Superintendent. The Board is vested with the discretion to determine the educational program of the District, so long as the New Mexico Public Education Department's programmatic requirements and statutorily required standards are met. The Board, in its discretion, may revise the educational program or decrease the number of employees of the District at any time and is solely vested with the discretion to determine when decreased enrollment, financial exigency or other causes justify a reduction in personnel.

In the event the Board decides to release licensed staff members, the following guidelines will be in effect:

- Normal attrition due to teacher resignations and retirements will be relied upon as the first means of reducing the staff.
- If attrition does not accomplish the required reduction in the staff, the Superintendent shall submit to the Board recommendations for the termination of specific staff members. The criteria used in formulating these recommendations shall include, but shall not be limited to:
  - Qualifications and certification of staff members to accomplish the District's educational program.
  - Overall teaching experience, academic training, and ability.
  - Past contributions to the educational program of the District.
  - All other things being equal, length of service in the District.

Criteria for selection of staff members to be released will be applied separately to teachers within licensure categories.

#### **G.5.1-A Situations Justifying Reduction In Force**

Situations that justify a RIF shall include, but not be limited to, the following:

- decrease in student enrollment;
- decrease in revenue;
  - because of decrease of student enrollment;
  - because of loss or reduction of tax revenues;
  - because of reduction of state, local or federal financial support; or
  - because of inflation reducing the value of revenues received;
- change in the educational program of the District, as determined by the Board in its good-faith exercise of discretion;
  - consolidation or de-consolidation involving the District;
  - court orders;
  - orders of the New Mexico Public Education Department; or
  - legislative mandates.

The Board shall exercise its discretion in good faith and determinations that a RIF, if necessary, shall be based on bona fide educational considerations and not be a subterfuge for discharging or terminating personnel without just cause or for impermissible reasons.

### **G.5.1-B Timing of Reduction In Force**

A RIF may occur at any time during the calendar year when the Board, in its discretion, determines that it is justified and the procedures prescribed herein are applicable and are followed. A RIF may be based upon projections of future enrollment, revenues or expenses; and the subsequent receipt of more revenue than projected and a subsequent saving of projected expenses shall not invalidate any actions previously taken in good-faith reliance on such projections or require the re-employment of any employees who were discharged or terminated on the basis of such projections.

### **G.5.1-C Preparation for Reduction In Force**

To the extent that circumstances permit, the Superintendent, with the assistance of the administrative staff, shall report to the Board any circumstances which may ultimately require a RIF in order that notice be given to personnel of the possibility of a RIF and so that consideration be given to means by which a RIF may be avoided if possible.

When the Superintendent concludes that a RIF is necessary, a Plan for a RIF shall be developed for presentation to and consideration by the Board. The RIF Plan shall not identify individuals to be discharged or terminated, but rather shall focus upon the total educational program of the District and how it may be modified to reduce the number of personnel while still providing the educational program required of the District and the particular educational needs of the District.

The RIF Plan shall include, but need not be limited to the following:

- a detailed description of the cause or causes requiring a RIF;
- a description of all adjustments already made by the administration in attempt to avoid a RIF, if any (e.g. reduction by attrition, cuts in non-tenured, non-certified staff, abolition of extra-curricular activities, etc.);
- a designation of the part or parts of the total educational program in which the RIF is proposed and the number of positions to be reduced in each program;
- a designation of extra-curricular activities which are to be retained, with a justification for retaining such programs; and
- a discussion of alternatives (if any) considered by the Superintendent with an explanation as to why such alternatives were rejected.

The Board shall consider the recommendations of the Superintendent for the adoption of the RIF Plan at a duly called Board meeting, the public notice of which announces that a RIF Plan will be considered. The discussion and action on the Plan shall be in open session; however, nothing herein shall restrict the Board from holding portions of those discussions in closed session, if such discussion would be proper under the New Mexico Open Meetings Act. The Board may allow such review, consultation and comment by employees and members of the public prior to taking final action on the Plan, as the Board, in its discretion, deems appropriate. The Board may accept, reject or modify the Plan recommended by the Superintendent as it deems appropriate. The District shall give employees affected by the RIF as much notice as feasible considering the circumstances of the need for the reduction in force.

*Adopted: December 2009*

## **G.5.2 Discipline of Professional Staff Members**

Unless limited by statutory provision, a public employer may:

- direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate public employees;
- determine qualifications for employment and the nature and content of personnel examinations;
- take actions as may be necessary to carry out the mission of the public employer in emergencies; and
- retain all rights not specifically limited by the Public Employee Bargaining Act.

### **G.5.2-A - Definitions**

For purposes of this policy:

- “Discharge” means the act of severing the employment relationship with a certificated school employee prior to the expiration of the current employment contract.
- “Terminate” means, in the case of a certificated school employee, the act of not re-employing and employee for the ensuing school year.
- “Working day” means every calendar day, excluding Saturday, Sunday, or legal holiday.
- “Just Cause” means a reason that is rationally related to an employee’s competence or turpitude or the proper performance of assigned duties and that is not in violation of the employee’s civil or constitutional rights.
- “Administrative leave” means the assignment of an employee to the employee’s home to await further instructions pending the outcome of an investigation or inquiry into the actions of the employee in order to avoid interference in the inquiry. The use of “administrative leave” is not a disciplinary action and may be promulgated only by the Superintendent.

### **G.5.2-B Infractions Warranting Discipline**

Licensed staff members may be disciplined for infractions that include, but are not limited to the following categories:

- Engaging in unprofessional conduct.
- Committing fraud in securing appointment.
- Exhibiting incompetency in their work.
- Exhibiting inefficiency in their work.
- Exhibiting improper attitudes.
- Neglecting their duties.
- Engaging in acts of insubordination.
- Engaging in acts of child abuse or child molestation.
- Engaging in acts of dishonesty.
- Being under the influence of alcohol while on duty.
- Engaging in the use, possession, or distribution of narcotics or habit-forming drugs
- Being absent without leave.
- Engaging in discourteous treatment of the public.
- Engaging in improper political activity.

- Engaging in willful disobedience.
- Being involved in excessive absenteeism.
- Possessing alcohol on school-owned property.
- Carrying or possessing a weapon on school grounds
- Engaging in ethical misconduct by inappropriate touching, sexual harassment, discrimination, or behavior intended to induce a child into engaging in illegal, immoral, or other prohibited behavior.

### **G.5.2-C General Provisions for Discipline**

General provisions for discipline are as follows:

- *Informal consultation* – nothing contained herein will limit a supervising administrator’s prerogative to engage in informal consultation with a licensed employee to discuss matters of concern related to the employee’s performance, conduct, et cetera.
- *Person authorized to impose discipline* – any supervising licensed administrator who is the immediate or primary supervisor of a staff member is authorized to impose a penalty or penalties, short of termination.
- *Administrative discretion* – in adopting these policies/procedures, it is the intention of the District that they be interpreted and applied in a reasonable fashion. The policies are not intended to restrict or eliminate the discretion traditionally afforded to supervising administrators to determine whether discipline is appropriate. Administrators are therefore directed to continue to use reasonable discretion in determining whether a particular alleged violation merits discipline.
- *Right not to impose discipline* – the District reserves the right not to discipline a staff member for conduct that violates this policy.
- *Additional reasons for discipline* – a staff member may be disciplined for conduct that has occurred but that, at or near the time of misconduct, was not the subject of or identified as a reason for a specific proceeding under this policy.
- *Amendments* – The District reserves the right to amend this policy in any way at any time. Any amendment shall have prospective application only.
- *Severability* – If any provision of this policy is held to be invalid for any reason, such action shall not invalidate the remainder of this policy.

*Adopted: December 2009*

### **G.5.3 Minor Discipline**

Minor disciplinary action includes, without limitation thereto, removal from grounds, written warning, written reprimand, or suspension. Minor disciplinary action shall be imposed by the staff member’s administrative supervisor upon informing the employee of any violations of state or federal statutes, policies, rules, or the New Mexico Code of Ethics and offering a minimum due process hearing with the opportunity to express the employee’s side of the issue before implementing the disciplinary action. The disciplinary action shall be confirmed in writing to the employee.

#### **G.5.3-A Minor Discipline Hearing**

The minor discipline hearing procedure shall be as follows:

- Step 1 – Notice

Upon the supervising administrator's determination of the existence of cause to impose discipline, the supervising administrator shall notify the staff member of intent to impose discipline. The notice shall be in writing and shall be delivered in person or by first-class mail. The notice shall include the following:

- The conduct or omission of the part of the staff member that constitutes the reason for discipline
- A scheduled meeting time between the supervising administrator and the staff member. This meeting shall be scheduled not more than ten (10) working days after the date the licensed staff member receives the notice.
- A statement of the disciplinary action the supervising administrator intends to impose.
- Copies of any available relevant documentation, at the discretion of the supervising administrator.

- Step 2 – Hearing

The supervising administrator shall conduct the hearing in an informal manner, without adherence to the rules of evidence and procedure required in judicial proceedings. The supervising administrator shall discuss with the staff member the conduct that warrants disciplinary action and shall provide the staff member with any appropriate evidence and a copy of relevant documentation if not previously provided.

- Step 3 – Written Decision

At the hearing, or within seven (7) working days following the hearing, the supervising administrator shall, in writing, inform the licensed staff member of the decision. If the decision is to impose discipline, written notice of the discipline shall be enclosed.

### **G.5.3-B Appeal of Minor Discipline**

A staff member who wishes to object to a minor disciplinary action shall submit a written complaint to the supervisor's superior within five (5) work days of receiving notice of disciplinary action. Failure to request the hearing in the time frame indicated will be considered acceptance of the discipline imposed. The appeal shall specifically describe the part of the determination with which the staff member disagrees, such as:

- Determination was founded upon error on construction or application of any pertinent regulations or policies.
- Determination was unsupported by any evidence as disclosed by the entire record.
- Determination was based on violation of any statutory or constitutional right.
- Determination was arbitrary and capricious.
- The penalty was excessive.

The appeal shall be based on the facts presented at the hearing. The supervising administrator, the Superintendent, or, when appropriate, the Board may, at the conclusion of the appeal, uphold the discipline, modify the decision, or refer the matter back to the level from which it was appealed for re-hearing and additional information. Such decision, along with specific direction as to the effective date of any discipline, shall be communicated to the staff member within a

reasonable amount of time following the appeal, not to exceed seven (7) working days. The decision upon appeal is final for all minor disciplinary actions.

#### **G.5.4 Termination Pursuant to 22-10A-25 NMSA (1978)**

The following procedures will be used to impose any termination permitted under 22-10A-24 NMSA (1978) except that it does not apply to:

- A certified instructor employed to fill the position of a certified school instructor entering military service;
- A person who is employed as a certified school administrator; or
- A non-certified school employee employed to perform primarily District-wide management.

##### **G.5.4-A Termination Procedural Steps**

A notice of termination shall be a notice of intention not to re-employ for the ensuing school year. Termination procedure shall be as follows:

- Step 1 – Notice

Upon the supervising administrator's determination of the existence of cause to terminate, and not later than fourteen (14) days prior to the last day of the school year, the supervising administrator shall notify the staff member of intent to terminate. The notice shall be in writing and shall be delivered in person, or by registered and first-class mail. The notice shall contain the following:

- the conduct or omission on the part of the staff member that constitutes the reason for termination
- A scheduled meeting time between the supervising administrator and the staff member. Such meeting shall be scheduled not more than five (5) working days after the date the staff member receives the notice.

- Step 2 – Pre-termination Hearing

At the hearing, the supervising administrator shall discuss with the staff member the conduct that warrants notice of termination and shall provide the staff member with written reasons for the decision to terminate. The hearing shall be conducted in an informal manner, without adherence to the rules of evidence and procedure required in judicial proceedings. The staff member shall be requested to present any rebuttal or reason the termination should not go forward.

- Step 3 – Pre-termination Hearing Written Decision

At the pre-termination hearing, or within five (5) days following the hearing, the supervising administrator shall, in writing, inform the staff member of the decision. If the decision is to recommend termination to the Superintendent, the staff member will be informed. The Superintendent shall notify the staff member if termination is approved. The reasons shall not be publicly disclosed by the administration or Board.

For an employee of less than 3 consecutive years of completed service, the decision is not contestable under the School Personnel Act.

#### **G.5.4-B Appeal Requirement and Content**

Termination may be appealed to the Board by a professional staff employee who has completed three (3) or more years of consecutive service by making a request to the Superintendent within five (5) working days of the date of receipt of the notice of termination requesting a meeting with the Board.

The appeal shall be granted if the employee responds to the Superintendent in writing within ten (10) working days of receiving the reasons for termination with the following information:

- A statement of contention that the employee believes the decision is without just cause
- A brief statement of the reason(s) why the staff member believes the decision is without just cause.
- A statement of the facts that the employee believes support this contention.

#### **G.5.4-C Appeal Hearing Procedure**

The Board shall meet to hear the employee's statement in no less than five (5) or more than fifteen (15) working days after receipt of the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meeting Act. The hearing procedure shall be as follows:

- The employee and the Superintendent may each be accompanied by a person of their choice.
- The Superintendent shall present the factual basis for determination that just cause exists for the termination, limited to the reasons provided to the employee.
- The employee shall present contentions, limited to the reason(s) why the licensed staff member believes the decision is without just cause.
- Rebuttal to the employee's presentation may be presented as deemed relevant by the Board.
- Witnesses called may be questioned by the Board, the Superintendent or an appointed representative, and the employee or an appointed representative.
- The Board may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable.
- No taped record shall be made of the hearing.

The Board shall take such action as is necessary in accordance with the Open Meeting Act to uphold or deny the recommendation to terminate. The Board shall notify the employee and the Superintendent of its decision in writing within five (5) working days from the conclusion of the meeting.

#### **G.5.4-D Termination Arbitration Appeal**

An employee aggrieved by a decision of the Board may appeal the decision to an arbitrator by doing the following:

- Submitting a written appeal to the superintendent within five (5) working days from receipt of the Board's written decision or refusal to grant a hearing on the issue of termination.



- Accompanying the written appeal shall be a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to subsection E of Section 22-10A-24 NMSA (1978).
- Including in the contentions a statement of facts supporting the contentions.

Failure of the employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify the employee for any appeal and render the Board's decision on termination final.

If the arbitration appeal is timely and complete, the Board and the employee shall meet within ten (10) working days from the receipt of the request for an appeal and select an independent arbitrator, qualified in accord with the applicable statute, to conduct the appeal. If the parties fail to agree on an arbitrator, they shall request the presiding judge in the judicial district in which the District is located to select an independent arbitrator within five (5) working days of the date of the request.

A de novo hearing shall be conducted within thirty (30) working days of selection of the independent arbitrator. The arbitrator shall give written notice of the date, time, and place of the hearing, sending such notice to the employee and Board.

The parties shall be provided a copy of the relevant portion of this policy which shall include:

- Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the arbitrator.
- The arbitrator may issue subpoenas for the attendance of witnesses and to produce books, records, documents, and other evidence at the request of either party and has the power to administer oaths. Subpoenas issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action or in the manner provided by the American Arbitration Association's voluntary labor arbitration rules if that entity is used by the parties.
- The Board shall be required to prove by a preponderance of the evidence that just cause to discharge the employee existed at the time of the notice of intent to discharge the employee by the administration.

#### **G.5.4-E Arbitration Hearing Procedure**

- The employee and the Board may each be accompanied by counsel.
- The Board shall present the basis for determination that just cause exists for the termination.
- The employee shall present reason(s) why the recommendation is without just cause.
- Either party shall be permitted to call witnesses and to introduce documentary evidence.
- Witnesses called may be questioned by the Board or a representative, and the employee or a representative.
- Technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of the statement or records tendered, the accuracy of truth of which is in reasonable doubt.
- A record shall be made of the hearing and each party may order the record at the expense of the party.

The arbitrator shall notify the employee and the Board of the decision in writing within ten (10) working days from the conclusion of the arbitration hearing. The decision shall contain findings of fact and conclusions of law affirming or reversing the action of the Board.

The parties shall be guided by the statute and arbitrator as to the conduct of the hearing, each party bearing its own costs. The arbiter's fees and other expenses in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

No official record shall be made of the proceedings unless either party requests such a record be made. The party desiring the record shall bear the expense.

### **G.5.5 Discharge per 22-10A-27 NMSA (1978)**

A certified employee may be discharged only for just cause following procedures as indicated below:

- **Step 1 – Notice**

Upon the Superintendent's determination of the existence of cause to discharge, the Superintendent shall notify the licensed staff member of intent to recommend discharge. The notice shall state the cause for the recommendation and shall advise the employee of a right to a discharge hearing before the Board. The notice shall be in writing and shall be provided in accordance with the law for service of process in civil actions.

- **Step 2 – Employee's Request for Hearing**

An employee who receives notice of intent to recommend discharge may exercise the right to a hearing before the Board by giving the Superintendent written notice of that election within five (5) working days of receipt of the notice or recommendation.

The Board shall hold a discharge hearing no less than twenty (20) and no more than forty (40) working days after the receipt of the staff member's election of a hearing.

- **Step 3 – Preliminary Information**

At least ten (10) days written notice of the date, time, and place of the discharge hearing shall be provided to the employee with such notice in the same form as used in civil proceedings. The notice shall indicate the following:

- Both the Superintendent and the certified school employee may be accompanied by a person of their choice.
- Each party is to complete and respond to discovery by deposition and production of documents prior to the hearing date established.
- The Board may issue subpoenas for the attendance of witnesses and to produce books, records, documents, and other evidence at the request of either party and the power to administer oaths.
- The administration shall be required to prove by preponderance of the evidence that just cause to discharge the certified employee existed at the time of the notice of intent to discharge.

### **G.5.5-A Discharge Hearing Procedure**

The procedure for the discharge hearing shall be as follows:

- The Superintendent shall present the factual basis for determination that just cause exists for the discharge based upon information available at the time the employee was given notice of the intent to discharge.
- The employee shall present reason(s) why the recommendation is without just cause.
- Either party shall be permitted to call witnesses and to introduce documentary evidence.
- Witnesses called may be questioned by the Superintendent or an appointed representative, and the employee or an appointed representative.
- The Board may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable.
- A record shall be made of the hearing and each party may have one (1) copy of the record at the expense of the Board.

The board shall notify the employee and the Superintendent of its decision in writing within twenty (20) days from the conclusion of the hearing. The board shall take such action as is necessary in accordance with the Open Meeting Act.

### **G.5.5-B Discharge Arbitration Appeal**

An employee aggrieved by a decision of the Board may appeal the decision to an arbitrator by submitting a written appeal to the superintendent within five (5) calendar days from receipt of the notice of discharge by the Board to the employee.

If the arbitration appeal is timely, the Board and the employee shall meet within ten (10) working days from the receipt of the request for an appeal and select an independent arbitrator, qualified in accord with the applicable statute, to conduct the appeal. If the parties fail to agree on an arbitrator, they shall request the presiding judge in the judicial district in which the District is located to select an independent arbitrator within five (5) working days of the date of the request.

The hearing shall be conducted within thirty (30) working days of selection of the independent arbitrator. The arbitrator shall give written notice of the date, time, and place of the hearing, sending such notice to the employee and Board.

The parties shall be provided a copy of the relevant portion of this policy which shall include:

- Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the arbitrator.
- The arbitrator may issue subpoenas for the attendance of witnesses and to produce books, records, documents, and other evidence at the request of either party and has the power to administer oaths. Subpoenas issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action or in the manner provided by the American Arbitration Association's voluntary labor arbitration rules if that entity is used by the parties.
- The Board shall be required to prove by a preponderance of the evidence that just cause to discharge the employee existed at the time of the notice of intent to discharge the employee by the administration.

### **G.5.5-C Arbitration Hearing Procedure**

- The employee and the Board may each be accompanied by counsel.
- The Board shall present the basis for determination that just cause exists for the discharge.
- The employee shall present reason(s) why the recommendation is without just cause.
- Either party shall be permitted to call witnesses and to introduce documentary evidence.
- Witnesses called may be questioned by the Board or a representative, and the employee or a representative.
- Technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of the statement or records tendered, the accuracy of truth of which is in reasonable doubt.
- A record shall be made of the hearing and each party may order the record at the expense of the party.

The arbitrator shall notify the employee and the Board of the decision in writing within thirty (30) working days from the conclusion of the arbitration hearing. The decision shall contain findings of fact and conclusions of law affirming or reversing the action of the Board.

Each party shall bear its own costs.

The arbiter's fees and other expenses in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

*Adopted: December 2009*

### **G.5.6 Additional Provisions/Conditions for Discipline of Professional Staff Members**

During the pendency of any hearing, neither the licensed staff member nor the supervising administrator shall contact the Superintendent or a Board member to discuss the merits of the supervising administrator's recommendation except as provided by this policy.

This policy addresses only discipline, termination, or discharge and has no application to:

- Letters or memorandums directed to a licensed staff member containing directives or instructions for future conduct.
- Counseling of a licensed staff member concerning expectations for future conduct.
- Placing an employee on administrative leave with pay and assignment of the employee to home during work hours in order to conclude a review of the employee's actions or activities pending and administrative recommendation. The use of "administrative leave" is not a disciplinary action and may be promulgated only by the Superintendent.

*Adopted: December 2009*

### **G.5.7 Discipline Reporting Requirements**

The Board shall file annually a record with the Secretary of Education of all terminations and all actions arising from terminations.

#### **G.5.7-A Reporting for Violating Standards of Professional Conduct**

Upon taking final action to discharge or terminate the employment of an employee on the basis of a violation of the standards of professional conduct, if that employee was authorized by license or waiver to provide instructional services, the Superintendent shall provide written notification to the director of the state licensure unit.

#### **G.5.7-B Reporting for Ethical Misconduct**

If an employee is resigning, being discharged or terminated, or otherwise leaves employment after an allegation of ethical misconduct, an investigation shall be conducted. Regardless of any non-disclosure agreement upon separation, if the result is wrongdoing, a report of the identity of the licensed school employee and attendant circumstances shall be made on a standardized form to the department and the licensed school employee within thirty (30) days following the separation from employment. Copies of the form shall not be maintained in the District.

*Adopted: December 2009*

### **G.6.0 Outside Employment of Professional Staff Members**

A regular, full-time employee's position in the District shall be given precedence over any type of outside work or self-employment. Employees are free to carry on individual work or self-employment projects as long as no District facilities or equipment are used, except as provided by policy, and the outside work or self-employment does not interfere with the employees' performance of District-assigned duties.

The outside work or self-employment by a staff member is of concern to the Board insofar as it may:

- Prevent the employee from performing assigned responsibilities in an effective manner.
- Be prejudicial to proper effectiveness in the position or compromise the District.
- Raise a question of conflict of interest

Therefore, an employee may not perform any duties related to outside work or self-employment during regular District working hours or during the additional time that is needed to fulfill the responsibilities of the District position. Employees who violate this policy are subject to reprimand, suspension, or termination.

*Adopted: December 2009*

#### **G.6.1 Tutoring for Pay**

Staff members are not permitted to provide tutoring for pay to any students who attend or are registered in any of their own classes except in organized tutorial programs which are publicly funded unless approved by the Superintendent.

*Adopted: December 2009*

### **G.6.2 Professional Research and Publishing**

The Board has proprietary right to publications, instructional materials, and devices prepared by employees unless prepared by such employees on their own time and without use of school facilities and/or equipment.

Any staff member or former staff member who submits professional materials for publication in which the District is mentioned will submit all such material to the Superintendent prior to release for publication, including materials developed on the employee's own time.

*Adopted: December 2009*

### **G.7.0 Support Staff Positions**

Before the establishment of any new position, the Superintendent will present a job description for the position that specifies the qualifications and the performance responsibilities.

The Superintendent will maintain a comprehensive and up-to-date set of job descriptions of all positions in the school system.

*Adopted: December 2009*

### **G.7.1 Support Staff Contracts and Compensation**

Support staff members are all employees of the District who are not required by state law or by a District policy, regulation, or job description to possess teaching licenses from the New Mexico Public Education Department for the purpose of performing their jobs, unless they are expressly designated as professional staff member in notices of employment or contracts executed by the Board.

The Superintendent will provide recommendations on salaries and fringe benefits to the Board each year. After receipt of the Superintendent's recommendations, the Board will annually establish the salaries and benefits for all employees within the budgetary constraints of the District.

*Adopted: December 2009*

### **G.7.2 Support Staff Salary Schedules**

The initial placement on the salary schedule for all new support staff personnel and for all currently employed personnel selected for another position in the District will be determined by the Superintendent based on the budget approved by the Board at the time of employment. The placement will be based on consideration of the candidate's qualifications, relevant job experience, and years of District employment, if applicable.

Salary advancement for regular twelve (12) month employees are granted only at the beginning of each fiscal year.

An employee must work one hundred and twenty (120) days to receive a step advancement in salary.

*Adopted: December 2009*

### **G.7.3 Support Staff Supplementary Pay/Overtime**

The Superintendent will recommend to the Board an extra-duty pay schedule each year for its review and action. Whenever applicable, pay for extra duty must be coordinated with regular pay in accord with the requirements of the Fair Labor Standards Act.

*Adopted: December 2009*

### **G.7.4 Support Staff Fringe Benefits**

The Board will review support staff fringe benefits each year during the budget process and may modify benefits to meet the best interest of the District. Minimum standards of eligibility for fringe benefits will be determined by the Board annually.

*Adopted: December 2009*

### **G.7.5 Support Staff Leaves and Absences**

Refer to G.3.5 through G.3.12 for terms and conditions of staff leave, absences, and guidelines for vacation and holiday time.

*Adopted: December 2009*

### **G.8.0 Support Staff Hiring**

It shall be the policy of the District to employ and retain the best qualified personnel. This will be accomplished by giving careful consideration to qualifications and by providing competitive salaries within the financial capabilities of the District, adequate facilities, and good working conditions.

Recruitment of support staff personnel is the responsibility of the Superintendent. Other members of the administration will assist as responsibilities are delegated by the Superintendent.

The Board adopts the following general criteria and procedures, which shall be utilized in the selection process for initial employment:

- There will be no discrimination in the hiring process due to race, color, religion, sex, sexual orientation, age, national origin, or disability of an otherwise qualified individual.

- Candidates for all positions shall be able to perform the duties of their position job descriptions.
- Each candidate shall be requested to complete a consent-and-release form regarding conducting of a background investigation. This background investigation shall consist of communication with the applicant's former employer(s) and/or references that concerns education, training, experience, qualifications and job performance for the purpose of evaluation for employment. This background investigation does not include the results of any state or federal criminal history records check.

Any employee's misstatement of fact that is material to qualifications for employment or the determination of salary shall be considered by the Board to constitute grounds for dismissal.

All offers of employment are contingent upon the satisfactory completion of backgrounds investigations.

### **G.8.1 Fingerprinting Requirements**

All personnel to be hired by the District who have not been subject to a criminal background check within the last 24 months will be subject to a criminal background investigation, including mandatory fingerprinting, at the candidate's expense as a condition of further consideration for employment.

Any offer of employment is contingent upon the satisfactory completion of all background investigations.

Criminal convictions shall not automatically bar an applicant from obtaining employment with the Capitan Municipal School District, but pursuant to the Criminal Offender Act, NMSA 1978, Sections 28-2-4 and 28-2-5, may be the basis for refusing employment.

With regard to existing employees, the District may conduct equivalent background investigations if the District becomes aware of facts, circumstances or conduct giving rise to a reasonable suspicion that the employee has a history which, if substantiated, may adversely affect on his/her fitness to continue in employment with the District.

A person who makes a false statement, representation, or certification in any application for employment with the District may be denied employment or terminated.

*Adopted: December 2009*

### **G.8.2 Part-time and Substitute Support Staff Employment**

The Superintendent may employ, when conditions warrant, temporary or part-time personnel on a per diem or time card basis. This authority is subject to the following condition:

- Continued employment of any such person shall be subject to confirmation of budgeted funds available; however, employment shall not be offered prior to satisfactory completion of pending background and fingerprint checks.



- The employee shall be compensated in accordance with the requirements and limitations of existing contracts that cover similar position or employees.

*Adopted: December 2009*

### **G.9 Support Staff Orientation and Training**

The Superintendent will establish a program to provide orientation for all new District employees. This training shall include, but is not limited to:

- Goals, objectives, and programs of the District.
- Personnel policies.
- Terms of employment.
- General disciplinary rules and procedures.
- Salary and fringe benefit plans.
- The evaluation program and name(s) of evaluator(s).
- Blood borne pathogen training.
- FERPA training.

*Adopted: December 2009*

### **G.10 Support Staff Schedules**

The usual workday for secretarial and clerical employees will begin at 7:30 AM and end at 5:30 PM on Monday through Wednesday and 7:30 AM to 5:00 PM on Thursday. The immediate supervisor may adjust working hours. Lunch periods and breaks will be coordinated with the supervisor.

Daily time schedules for the various employees will be established by the Superintendent, together with school administrators.

The length of contractual work year will vary according to respective job descriptions.

All support staff employees shall report to their duty stations on time each workday and shall be available there as scheduled until the designated time to leave.

*Adopted: December 2009; Revised: February 2014*

#### **G.10.1 Support/Maintenance/Custodial Staff Workload**

The normal workweek for applicable support/maintenance/custodial staff will not exceed forty (40) hours per week. Workweek structures may vary according to the needs of the District. Employees will be notified at least a week in advance of modifications to the work week plan unless extenuating circumstances warrant an immediate adjustment of schedule to meet the needs of the District.

Individual employee work schedules will be based on the position held by the respective employees and on the District needs as identified during the employment process.

For the purpose of calculating regular and overtime hours in accordance with wage and hour requirements, the District's designated workweek shall begin at 12:01 AM Saturday and conclude at 12:00 midnight the following Friday.

An employee may work overtime, provided that advance authorization is obtained from the Superintendent. Should an emergency arise, this authorization is obtained immediately upon completion of the work or as soon thereafter as practicable.

*Adopted: December 2009; Revised: February 2014*

### **G.10.2 Time Cards for Support Staff**

Nonexempt employees, those noncertified employees subject to the minimum wages and overtime provisions of the Fair Labor and Standards Act, are required to complete an individual time sheet showing the daily hours worked.

- Time sheets shall cover one (1) workweek and shall be completed at the close of each work day. Employees shall record their starting time, time out for lunch, time in from lunch, quitting time, and total hours worked for each work day.
- Employees are not permitted to sign in or commence work more than fifteen (15) minutes before their normal starting or to sign out or stop work later than fifteen (15) minutes after their normal quitting time without the prior approval of the supervisor.
- All employees are required to take a lunch or meal break. Exceptions may be made for lunch periods per a voluntarily signed and written agreement between the employee and administrator.
- All employee time sheets shall be verified and signed by the school administrator.
- Reporting another employee's time or falsifying one's own time is prohibited and may be grounds for disciplinary action including termination.
- Nonexempt employees who work more than forty (40) hours per week shall be paid "compensatory time" at the rate of one and one-half (1½) hours for each hour of overtime work. In cases of emergency, when the employee cannot be immediately released for this time and one-half compensation, the Superintendent will make the decision as to paying the employee at the rate of time and one-half or having the employee take the time off at a future date. The hours must be approved by the Superintendent before an employee works overtime or, in the case of an emergency, immediately upon completion of the work or as soon thereafter as possible.
- Compensatory time off shall be taken during the following pay period or workweek in which it was earned unless the use of compensatory time off would unduly disrupt the operations of the District.
- Overtime compensation does not apply to exempt employees or to volunteers.

*Adopted: December 2009*

### **G.11 Support Staff Meetings**

The Superintendent will arrange for and hold staff meetings as the need may arise. This authority may be delegated to the school principals who may hold such meetings on a regularly scheduled basis or as the need arises.

All appropriate staff members are required to attend any such meeting(s) unless officially excused.

*Adopted: December 2009*

### **G.12 Evaluation of Support Staff**

All support personnel shall be evaluated by the appropriate administrator at least once each year. The evaluation will be used to increase job proficiency and for recommending continued employment. (Details of evaluation of all personnel included in CMS Comprehensive Performance Evaluation System Handbook)

*Adopted: December 2009*

### **G.13.0 Resignation of Support Staff Member**

Employees voluntarily terminating their service with the District are expected to give advance notice of not less than two (2) weeks. This notice should be submitted to the supervisor in writing and should specify both the last day of work and the reason for terminating.

Authorized unused vacation credit will be paid to employees with the last paycheck.

*Adopted: December 2009*

### **G.13.1 Reduction in Force (RIF) of Support Staff**

The number and type of support staff positions required to implement the District's educational program will be determined annually by the Board after recommendation from the Superintendent. In the event the Board decides to release support staff members, the following guidelines will be in effect:

- Normal attrition due to resignations and retirements will be relied upon as the first means of reducing the staff.
- If attrition does not accomplish the required reduction in the staff, the Superintendent shall submit to the Board recommendations for the termination of specific staff members. The criteria used in formulating these recommendations shall include, but shall not be limited to:
  - Qualifications of staff members to accomplish the District's educational program.
  - Overall experience, training, and ability.
  - Past contributions to the program of the District.
  - All other things being equal, length of service in the District.

Criteria for selection of staff members to be released will be applied separately to teachers within specialty categories.

*Adopted: December 2009*

### **G.13.2 Discipline of Support Staff Members**

Unless limited by statutory provision, a public employer may:

- direct the work of, hire, promote, assign, transfer, demote, suspend, discharge, or terminate public employees;
- determine qualifications for employment and the nature and content of personnel examinations;
- take actions as may be necessary to carry out the mission of the public employer in emergencies; and
- retain all rights not specifically limited by the Public Employee Bargaining Act.

#### **G.13.2-A - Definitions**

For purposes of this policy:

- “Terminate” means, in the case of a non-certificated school employee, the act of severing the employment relationship with the employee
- “Working day” means every calendar day, excluding Saturday, Sunday, or legal holiday.
- “Administrative leave” means the assignment of an employee to the employee’s home to await further instructions pending the outcome of an investigation or inquiry into the actions of the employee in order to avoid interference in the inquiry. The use of “administrative leave” is not a disciplinary action and may be promulgated only by the Superintendent.

#### **G.13.2-B Infractions Warranting Discipline**

Staff members may be disciplined for infractions that include, but are not limited to the following categories:

- Committing fraud in securing appointment.
- Exhibiting incompetency in their work.
- Exhibiting inefficiency in their work.
- Exhibiting improper attitudes
- Neglecting their duties
- Engaging in acts of insubordination.
- Engaging in acts of child abuse or child molestation.
- Engaging in acts of dishonesty
- Being under the influence of alcohol while on duty.
- Engaging in the use, possession, or distribution of narcotics or habit-forming drugs
- Being absent without leave
- Engaging in discourteous treatment of the public.
- Unlawful conduct.
- Engaging in willful disobedience.
- Being involved in excessive absenteeism.

- Possessing alcohol on school-owned property.
- Carrying or possessing a weapon on school grounds.

### **G.13.2-C General Provisions for Discipline**

General provisions for discipline are as follows:

- *Informal consultation* – nothing contained herein will limit a supervising administrator’s prerogative to engage in informal consultation with a licensed employee to discuss matters of concern related to the employee’s performance, conduct, et cetera.
- *Person authorized to impose discipline* – any supervising licensed administrator who is the immediate or primary supervisor of a staff member is authorized to impose a penalty or penalties, short of termination.
- *Administrative discretion* – in adopting these policies/procedures, it is the intention of the District that they be interpreted and applied in a reasonable fashion. The policies are not intended to restrict or eliminate the discretion traditionally afforded to supervising administrators to determine whether discipline is appropriate. Administrators are therefore directed to continue to use reasonable discretion in determining whether a particular alleged violation merits discipline.
- *Right not to impose discipline* – the District reserves the right not to discipline a staff member for conduct that violates this policy.
- *Additional reasons for discipline* – a staff member may be disciplined for conduct that has occurred but that, at or near the time of misconduct, was not the subject of or identified as a reason for a specific proceeding under this policy.
- *Amendments* – The District reserves the right to amend this policy in any way at any time. Any amendment shall have prospective application only.
- *Severability* – If any provision of this policy is held to be invalid for any reason, such action shall not invalidate the remainder of this policy.

*Adopted: December 2009*

### **G.13.3 Minor Discipline**

Minor disciplinary action includes, without limitation thereto, removal from grounds, written warning, written reprimand, or suspension. Minor disciplinary action shall be imposed by the staff member’s administrative supervisor upon informing the employee of any violations of state or federal statutes, policies, rules, or the New Mexico Code of Ethics and offering a hearing and opportunity to express the employee’s side of the issue before implementing the disciplinary action. The disciplinary action shall be confirmed in writing to the employee. The discipline may only be appealed to the next level of administration.

#### **G.13.3-A Minor Discipline Hearing**

The minor discipline hearing procedure shall be as follows:

- Step 1 – Notice and Hearing

Upon the supervising administrator’s determination of the existence of cause to impose discipline, the supervising administrator’s shall notify the staff member of intent to impose discipline. The notice shall include the conduct or omission of the part of the staff member that constitutes the reason for discipline and provide the employee an opportunity to explain

the employee's side of the issue. A reasonable effort to determine the circumstances of the incident will be made. The discipline may be imposed immediately or following any further investigation.

- Step 2 – Written Decision

At the hearing, or within seven (7) working days following the hearing, the supervising administrator shall, in writing, inform the employee of the disciplinary action, if imposed, and summarize the discussion at the hearing.

### **G.13.3-B Appeal of Minor Discipline**

A staff member who wishes to object to a minor disciplinary action shall submit a written complaint to the supervisor's superior within five (5) work days of receiving notice of disciplinary action. Failure to request the hearing in the time frame indicated will be considered acceptance of the discipline imposed. The appeal shall specifically describe the part of the determination with which the staff member disagrees, such as:

- Determination was founded upon error on construction or application of any pertinent regulations or policies.
- Determination was unsupported by any evidence as disclosed by the entire record.
- Determination was based on violation of any statutory or constitutional right.
- Determination was arbitrary and capricious.
- The penalty was excessive.

The appeal shall be based on the staff member's submission and the summary of the hearing made by the supervisor. The supervising administrator, the Superintendent, or, when appropriate, the Board may, at the conclusion of the appeal, uphold the discipline, modify the decision, or refer the matter back to the level from which it was appealed for re-hearing and additional information. Such decision, along with specific direction as to the effective date of any discipline, shall be communicated to the staff member within a reasonable amount of time following the appeal, not to exceed seven (7) working days. The decision upon appeal is final for all minor disciplinary actions.

*Adopted: December 2009*

### **G.13.4 Termination Pursuant to 22-10A-25 NMSA (1978)**

The following procedures will be used to impose any termination permitted under 22-10A-24 NMSA (1978) except that it does not apply to a non-certified school employee employed to perform primarily District-wide management.

#### **G.13.4-A Termination Procedural Steps**

A notice of termination shall be a notice of intention not to re-employ for the ensuing school year. Termination procedure shall be as follows:

- Step 1 – Notice

Upon the supervising administrator's determination of the existence of cause to terminate, the supervising administrator shall notify the staff member of intent to terminate. The notice shall be in writing and shall be delivered in person or by first-class mail. The notice shall contain the following:

- the conduct or omission on the part of the staff member that constitutes the reason for termination
- A scheduled meeting time between the supervising administrator and the staff member. Such meeting shall be scheduled not more than five (5) working days after the date the staff member receives the notice.

- Step 2 – Pre-termination Hearing

At the hearing, the supervising administrator shall discuss with the staff member the conduct that warrants notice of termination and shall provide the staff member with written reasons for the decision to terminate. The hearing shall be conducted in an informal manner, without adherence to the rules of evidence and procedure required in judicial proceedings. The staff member shall be requested to present any rebuttal or reason the termination should not go forward.

- Step 3 – Pre-termination Hearing Written Decision

At the pre-termination hearing, or within five (5) days following the hearing, the supervising administrator shall, in writing, inform the staff member of the decision. If the decision is to terminate, written notice shall be enclosed. The reasons shall not be publicly disclosed by the administration or Board.

For an employee of less than 3 consecutive years of completed service, the decision is not contestable under the School Personnel Act.

#### **G.13.4-B Appeal Requirement and Content**

Termination may be appealed to the Board by an employee who has completed three (3) or more years of consecutive service by making a request to the Superintendent within five (5) working days of the date of receipt of the notice of termination requesting a meeting with the Board.

The appeal shall be granted if the employee responds to the Superintendent in writing within ten (10) working days of receiving the reasons for termination with the following information:

- A statement of contention that the employee believes the decision is without just cause
- A brief statement of the reason(s) why the staff member believes the decision is without just cause.
- A statement of the facts that the employee believes support this contention.

#### **G.13.4-C Appeal Hearing Procedure**

The Board shall meet to hear the employee’s statement in no less than five (5) or more than fifteen (15) working days after receipt of the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meeting Act. The hearing procedure shall be as follows:

- The employee and the Superintendent may each be accompanied by a person of their choice.

- The Superintendent shall present the factual basis for determination that just cause exists for the termination, limited to the reasons provided to the employee.
- The employee shall present contentions, limited to the reason(s) why the staff member believes the decision is without just cause.
- Rebuttal to the employee's presentation may be presented as deemed relevant by the Board.
- Witnesses called may be questioned by the Board, the Superintendent or an appointed representative, and the employee or an appointed representative.
- The Board may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable.
- No taped record shall be made of the hearing.

The Board shall take such action as is necessary in accordance with the Open Meeting Act to uphold or deny the recommendation to terminate. The Board shall notify the employee and the Superintendent of its decision in writing within five (5) working days from the conclusion of the meeting.

#### **G.13.4-D Termination Arbitration Appeal**

An employee aggrieved by a decision of the Board may appeal the decision to an arbitrator by doing the following:

- Submitting a written appeal to the Superintendent within five (5) working days from receipt of the Board's written decision or refusal to grant a hearing on the issue of termination.
- Accompanying the written appeal shall be a statement of particulars specifying the grounds on which it is contended that the decision was impermissible pursuant to subsection E of Section 22-10A-24 NMSA (1978).
- Including in the contentions a statement of facts supporting the contentions.

Failure of the employee to submit a timely appeal or a statement of particulars with the appeal shall disqualify the employee for any appeal and render the Board's decision on termination final.

If the arbitration appeal is timely and complete, the Board and the employee shall meet within ten (10) working days from the receipt of the request for an appeal and select an independent arbitrator, qualified in accord with the applicable statute, to conduct the appeal. If the parties fail to agree on an arbitrator, they shall request the presiding judge in the judicial district in which the District is located to select an independent arbitrator within five (5) working days of the date of the request.

A de novo hearing shall be conducted within thirty (30) working days of selection of the independent arbitrator. The arbitrator shall give written notice of the date, time, and place of the hearing, sending such notice to the employee and Board.

The parties shall be provided a copy of the relevant portion of this policy which shall include:

- Discovery shall be limited to depositions and requests for production of documents on a time schedule to be established by the arbitrator.



- The arbitrator may issue subpoenas for the attendance of witnesses and to produce books, records, documents, and other evidence at the request of either party and has the power to administer oaths. Subpoenas issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action or in the manner provided by the American Arbitration Association's voluntary labor arbitration rules if that entity is used by the parties.
- The Board shall be required to prove by a preponderance of the evidence that just cause to discharge the employee existed at the time of the notice of intent to discharge the employee by the administration.

#### **G.13.4-E Arbitration Hearing Procedure**

- The employee and the Board may each be accompanied by counsel.
- The Board shall present the basis for determination that just cause exists for the termination.
- The employee shall present reason(s) why the recommendation is without just cause.
- Either party shall be permitted to call witnesses and to introduce documentary evidence.
- Witnesses called may be questioned by the Board or a representative, and the employee or a representative.
- Technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of the statement or records tendered, the accuracy of truth of which is in reasonable doubt.
- A record shall be made of the hearing and each party may order the record at the expense of the party.

The arbitrator shall notify the employee and the board of the decision in writing within ten (10) working days from the conclusion of the arbitration hearing. The decision shall contain findings of fact and conclusions of law affirming or reversing the action of the Board.

The parties shall be guided by the statute and arbitrator as to the conduct of the hearing, each party bearing its own costs. The arbiter's fees and other expenses in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

*Adopted: December 2009; Revised July 2011*