

SECTION V

HUMAN RESOURCES/PERSONNEL

DISTRICT GOAL

The goal of the School District is to secure proficient personnel through competitive salary, benefits, and support for professional development.

5.1. EMPLOYMENT OF PERSONNEL

The Superintendent will employ and assign personnel specifically for the development and operation of the instructional programs of the School District and other personnel to perform the support services necessary to the operation of the School District. The determination of qualifications for employment, the nature and content of personnel examinations, staffing requirements, and the need to create or abolish positions is the responsibility of administration.

Pursuant to N.M.Stat.Ann ' 22-5-14, the Superintendent has statutory authority to employ, fix the salaries of, assign, terminate or discharge all employees of the District.

5.1.1. RELEASE OF PERSONNEL INFORMATION

It shall be the policy of the Board of Education and Administration to protect the privacy of prospective employees to the extent permitted by law. Accordingly, some personnel information retained by the School District shall be considered confidential unless the New Mexico Inspection of Public Records Act, N.M. Stat. Ann ' 14-2-1 *et seq.* (1978, as amended), requires otherwise.

Confidential personnel information will not be released unless pursuant to a federal, state or tribal court subpoena, a waiver properly executed by employee or applicant allowing disclosure or a properly issued administrative subpoena from a federal or state governmental agency or commission with appropriate jurisdiction.. Other personnel information will be made available pursuant to the Inspection of Public Records Act, as interpreted by the New Mexico courts.

The School District shall treat the following types of personnel information as confidential:

- A. Letters of reference concerning employment;
- B. Letters of memorandum, evaluation forms and disciplinary forms or letters that are matters of opinion in a personnel file;
- C. Medical and related information pertaining to illness, injury, disability to perform a job task, or sick leave or any other medical information protected by the Health Insurance

Portability and Accountability Act of 1996 (HIPAA) and the Americans with Disabilities Act of 1990 (ADA), including drug or alcohol treatment records protected under 42 U.S.C. ' 290dd-2(a); 42 U.S.C. ' 290ee-3 and 42 C.F.R. ' 2.1(a);

D. Other types of personal information, such as military discharge or arrest records,

1. Which were solicited by the School District;
2. Which are considered vital to the employment procedures, such as applicant screening and employee evaluation;
3. Which was furnished after a promise to keep the information confidential; and
4. For which disclosure would not appear to serve any identifiable public interest.

The District will treat these types of information as confidential to protect the privacy of prospective employees and to encourage qualified persons to apply for positions with assurance that the mere fact of their application for another job need not become public information.

5.1.2. VERIFICATION OF EMPLOYMENT TO OUTSIDE AGENCIES

When requests for verification of employment are made by outside agencies, the Superintendent is authorized to release the following limited general information without the employee's consent:

- A. Position held;
- B. Dates of Employment;
- C. Location of job site; and
- D. Status of employment (full time/part-time/substitute).

5.1.3. EMPLOYMENT RECOMMENDATIONS FOR EMPLOYEES OF THE DISTRICT

1. Board Findings

The Board of Education finds as follows:

- (a) That 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 employer's current or former

employees under certain circumstances;

- (b) That individual employees of the School District who wish to provide employment references or recommendations for current or former employees may not be in possession of all pertinent information regarding a current or former employee necessary to provide a complete and fair employment reference or recommendation;
- (c) That under current law, an individual employee of the School District who provides a recommendation or references for a current or former employee of the District may be mistakenly perceived as providing such reference or recommendation on behalf of the School District;
- (d) That limitations and conditions are required to prevent employment references or recommendations by individual employees from being attributed to the School District when such references or recommendations have not been authorized by the School District.

2. Rules Regarding Employment References and Recommendations:

In view of the foregoing, no employee of the School District, except the Superintendent or his or her designee, is authorized to issue a written or oral employment reference or recommendation for a current or former employee of the School District except in compliance with the following:

- 1. No employee may issue or provide an employment reference or recommendation in his or her capacity as an employee of the School District for a current or former employee orally--all such references or recommendations shall be in writing only;
- 2. No employee may issue or provide an employment reference or recommendation in his or her capacity as an employee of the School District for a current or former employee without first;
 - a. Providing a copy of the proposed reference or recommendation to the Director for Human Resources for approval; and
 - b. Receiving the Director for Human Resource's written authorization of the reference or recommendation provided.
- 3. An employee who wishes to provide an employment reference or recommendation in his or her *personal capacity only* for a current or former employee of the School District, without the authorization or endorsement of the District, shall observe the following limitations and conditions:
 - a. No employee providing such *personal* reference or recommendation orally may do so during working hours, or while on School District premises, or through

the use of a telephone or other communications media owned by the School District;

- b. No employee providing such *personal* reference or recommendation in writing may do so during working hours or while on School District premises, or using any School District or school letterhead or any communications media owned by the School District, or by other means that suggests School District authorization or agreement; and
- c. An employee providing 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 District.

3. Investigation, Waiver, and Release of Information; Recordkeeping

- 1. Upon receiving a copy or original of a request for a proposed reference for a former employee, the Director for Human Resources shall have the person or entity requesting the reference complete a form allowing the School District to release such information and waiver of liability executed by the former employee if not already provided by the person or entity requesting the reference. Except as provided below in this Policy, no reference of a former employee will provide without the release and waiver of liability and all information provided will be limited to the employment verification information set forth above.
- 2. Upon receiving a copy or original of a request for a proposed reference for a former employee and receipt of or completion of a release and waiver of liability form, the Director for Human Resources shall make appropriate inquiries about the former employee of building administrators at each building in which the former employee worked while employed by the School District, and shall compile a record of all information regarding the former employee's competency, turpitude, and proper performance of duties. In approving the issuance of a recommendation on behalf of the School District, the Director for Human Resources 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.
- 3. The recommendation shall be made in good faith. It shall not be false, malicious, misleading or violate the civil rights of the former employee.
- 4. The Superintendent shall, with the assistance of counsel for the School District, complete any request for reference for any former employee who based on his or her conduct in the School District has the potential to pose a danger to others should the former employee be employed elsewhere. Should the Superintendent, with the assistance of counsel for the School District, determine that the former employee subject to the request for a reference poses a danger to others should the former employee be employed elsewhere, including another school district, the Superintendent shall provide the reference of the former describing in detail the basis upon which the

former employee poses a danger to others regardless of whether the former employee has executed or completed a required release and waiver of liability form.

5. The Director for Human Resources shall keep and maintain copies of all proposed references or recommendations submitted to the Director for Human Resources or submitted to the Superintendent, copies of information compiled as to each, and the Director's and Superintendent's responses to each such proposed reference or recommendation.

4. Penalties

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

5.2. EQUAL EMPLOYMENT OPPORTUNITY

The School District does not discriminate on the basis of race, age, religion, color, national origin, ancestry, sex or gender, pregnancy, sexual orientation, gender identity, physical or mental handicap, serious medical condition, disability, spousal affiliation, military status in employment or the provision of services. This includes, but is not limited to, admissions, educational services, financial aid and employment.

The U.S. Equal Employment Opportunity Commission (EEOC) allows all employers to take all actions necessary to comply with the requirements of the Americans with Disabilities Act of 1990. These obligations are not subject to bargaining under any collective bargaining agreement.

ANY EMPLOYEE WHO FEELS THAT HE OR SHE HAS BEEN AND/OR IS BEING DISCRIMINATED AGAINST IN VIOLATION OF THE SCHOOL DISTRICT'S ANTI-DISCRIMINATION POLICIES, INCLUDING ANY EMPLOYEE WHO FEELS HE OR SHE HAS BEEN AND/OR IS BEING SEXUALLY HARASSED OR HAS INQUIRIES CONCERNING THE SCOPE AND APPLICATION OF THE SCHOOL DISTRICT'S ANTI-DISCRIMINATION POLICIES WITH REGARD TO HIS OR HER EMPLOYMENT SHALL SUBMIT COMPLAINTS AND INQUIRIES TO:

Superintendent
Dawn Apodaca
Mountainair Public Schools
P.O. Box 456
Mountainair, NM 87036
(505) 847-2333

Nothing in this Policy prohibits the submission of inquiries or complaints to the Superintendent of Schools. Retaliation is prohibited against any employee who has made

inquiries or complaints under this Policy. Any retaliation in violation of this Policy by any employee shall subject such employee to discipline, including termination or discharge.

5.2.1. APPLICANT/EMPLOYEE RESPONSIBILITY

Should an employee or applicant be disabled as defined by Federal or State Law. The School District is willing to make reasonable accommodations with regard to limitations of which it is notified according to the requirements of the Americans with Disabilities Act of 1990, the New Mexico Human Rights Act and with Section 504 of the Rehabilitation Act of 1973. It is the responsibility of the applicant or employee to inform the Director for Human Resources if an accommodation is needed and request such an accommodation.

5.2.2. DISABLED EMPLOYEE INFORMATION

The Superintendent will provide the working conditions for a sound educational program. The area in which our disabled employees work will be modified to accommodate them in a manner in which they can serve and work in a safe environment. Reasonable accommodation(s) will be made for employees who may have a disability as defined in the Americans with Disabilities Act and the New Mexico Human Rights Act. The Superintendent or his designee will work with the disabled employee or disabled applicant to determine what constitutes a reasonable accommodation(s). Accommodations may include, but are not limited to, ramps, rails, doors, restrooms, drinking fountains, telecommunications devices, **service animals** and appropriate access and exit to and from facilities. The determination of whether any particular accommodation is or any set of accommodations are reasonable will be made according to the federal or state applicable to such a determination and will be made by the Superintendent of Schools with the assistance of counsel for the School District.

5.3. EMPLOYEE CODE OF ETHICS AND CONDUCT

School personnel will carry out their duties and responsibilities in ways which will merit the respect and confidence of the community, students, and fellow staff members. School personnel are respected by the community and the School District when each individual member of the team:

1. Knows his/her areas of responsibility and the functions of his/her job;
2. Respects the role of each of his/her colleagues in the School District;
3. Is proud of and loyal to his/her school/department and profession;

4. Does not engage in slanderous conversations in person or on social media about the School District.
5. Knows and respects the appropriate relationship employees that must exist between students and employees; and
6. Is a responsible citizen of his/her school/department and community.

5.3.1. CODE OF ETHICS: CERTIFIED PERSONNEL

The New Mexico Public Education Department has set standards of acceptable ethical behavior and professional conduct in education that are applicable to all licensed school personnel, instructional personnel under contract, including any other person who provides instructional services in a school but who does not hold a standard license and whose presence is authorized by the New Mexico Public Education Department through a waiver, substandard license, substitute license, or an educational plan approved by the New Mexico Public Education Department. NMAC ' 6.60.9.1 to ' 6.60.9.12 (as amended or recoded in the future).

The Board of Education hereby adopts the New Mexico Public Education Departments Code of Ethical Responsibility cited above and (as amended or recoded in the future), by such adoption, makes the standards of the Code of Ethics mandatory upon all personnel of the School District and compliance with those standards a contractual duty of all personnel of the District.

5.3.2 CODE OF CONDUCT FOR ALL PERSONNEL

The Board of Education further recognizes the need to adopt local standards of ethical behavior and conduct for both certified and non-certified personnel. Therefore, the Board of Education adopts the following Code of Conduct for all employees establishing standards and expectations for employee behavior, which, if violated, may form a basis for discipline, up to and including termination or discharge.

This Code highlights employment responsibilities and sets forth concrete behaviors/**standards** appropriate for all school personnel. We are committed to this Code and understand that it provides minimal standards of accepted conduct for employees of the School District.

Pertaining to students, all school employees shall:

1. Refrain from disclosing confidential student records or information about a student or his/her personal and family life unless the release of information has been approved by the student's parent/legal guardian, or is allowed or required by law in compliance with the Family Educational Rights and

Privacy Act of 1974 (FERPA) the Individuals with Disabilities Education Act (IDEA), the New Mexico Mental Health and Developmental Disabilities Code (N.M. Stat. Ann. ' 43-1-19), the Inspection of Public Records Act (N.M. Stat. Ann. ' 14-2-1 et seq.), the Public School Code (N.M. Stat. Ann. ' 22-1-9-8), and the Children's Code (N.M. Stat. Ann. ' 32A-2-32 & ' 32A-4-3) (as amended or recoded in the future);

2. Not discriminate against any student on the basis of race, color, national origin, ethnicity, sex or gender, pregnancy, sexual orientation, gender identity, physical or mental handicap, serious medical condition, disability, or spousal affiliation nor permit students within the employee's control, supervision or responsibility to do so;
3. Avoid using their position as a school employee to exploit a student or influence a student to engage in an illegal act, immoral act, or any other behavior that would subject a school employee or student to discipline for misconduct whether or not the student actually engages in the behavior;
4. Refrain from fraternizing with students outside the context of school or school-sponsored activities, and tutor students only in accordance with Board policies, if any, upon obtaining written permission from the student's parent/legal guardian, and at a place or time approved by the employee's supervisor and the student's parent/legal guardian;
5. Refrain from giving any gift to any student unless all similarly-situated students receive or are offered the same gift for the same reason;
6. Shall not use their positions, their influence, or their authority over students to make personal demands upon students unrelated to the purposes of their education. Employees shall not become intimately involved with students, shall not engage in or respond to romantic, sexually oriented, or other intimate relations, or activities with students, nor participate in any unethical behaviors or conduct with them prohibited by the Board of Education's policies;
7. Refrain from lending a student money except in instances of emergencies, or in which a student's safety or well being may otherwise be threatened, or the student will otherwise be unable to participate in a school activity, and all such instances and the reason for the action shall be reported to the employee's supervisor as soon as practicable;
8. Avoid inappropriate contact with students regardless of time or location including, but not limited to:
 - a. All forms of sexual contact, and sexual or romantic relations;

- b. Inappropriate physical contact, embracing, petting, hand-holding, or kissing;
 - c. Favoritism in **any capacity**; and
 - d. Offering or giving a ride to a student unless absolutely necessary to the student's safety or well being, and all such instances shall be reported to the employee's supervisor as soon as practicable;
9. Report any instances to the Superintendent or any School District administrator in which the employee reasonably suspects that another employee has engaged in sexual, physical or **any other contact as deemed inappropriate** or prohibited by this Policy with a student, or that any other adult has engaged in sexual contact with a minor student;
 10. Abide by the prohibitions of N.M. Stat. Ann. ' 30-9-11 (1978) or any other statute whether federal or state, which imposes felony sanctions for a school employee who has had sexual relations with a student less than eighteen years of age;
 11. Become familiar with and abide by Board of Education policies related to inappropriate contact with students and sexual harassment of students by employees or by students, avoid sexual harassment of students, and not permit students within the control, supervision or responsibility of the employee to sexually harass any other student, such as by any verbal or physical conduct of a sexual nature with a student -- including any sexual advances or requests for sexual favors, and use of any sexually oriented names or references -- even when the employee believes the student is initiating or consents to such conduct, and avoidance of any possession, display, or distribution of sexually-oriented materials or information at school except any that are part of the curriculum;
 12. Report to the administration any instance in which the employee suspects that a student has been subjected to sexual harassment at school, during school-sponsored activities, or during school transportation to or from such activities;
 13. Avoid any unauthorized or inappropriate discipline of a student or corporal punishment in excess of, or contrary to, Board policy, and under no circumstances shall corporal punishment be such that it injures a student, and, in interactions with students:
 - a. Control anger, deescalate conflicts and confrontations, avoid loss of temper, and refrain from any form of physical or verbal abuse of students, except reasonable physical intervention limited to restraint of students actively engaged in, or threatening, physical violence or harm toward himself or herself, other staff members, or other students, and instances of such

physical restraint shall be reported to the administration as soon as practicable;

- b. Refrain from using or tolerating on school premises, while at any school activity, and during school transportation to or from any school activity, the use of vulgar, profane, or personally offensive terms, names or nicknames, racial, ethnic, or sexual epithets, and racially, ethnically, or sexually insensitive terms, racial, ethnic, or sexual jokes or slurs, crude anatomical references, other offensive, profane or abusive verbal or non-verbal communications; including libelous/slanderous statements;
 - c. Obtain written supervisory approval with regard to particular words, terms, or other communications the employee uses or proposes to use that are or may be otherwise prohibited by this Code;
 - d. Avoid being provoked into a response barred by this policy, by student conduct or communications;
14. Avoid engaging in violent or threatening behavior toward students, regardless of provocation, except when required for the immediate defense from serious physical harm of the employee, another student, staff member, or authorized person on campus.

In general, all school employees shall:

- 1. Comply with all Board policies and administrative regulations regarding standards of employee behavior or conduct;
- 2. Disclose all material facts in all procedures for obtaining employment or licensure, and refrain from making false or misleading statements in connection therewith;
- 3. Avoid misrepresentation of his or her qualifications for employment or promotion;
- 4. Refrain from assisting persons in obtaining educational employment whom he or she knows to be unqualified with respect to their character, education, or employment history;
- 5. Refrain from making or engaging in negative comments on social media about fellow staff members, students or the District in general.
- 6. Refrain from making false or misleading statements concerning the qualifications of anyone seeking employment with the School District;

7. Refrain from permitting or assisting unqualified or unauthorized persons to obtain employment with the School District;
8. Avoid disclosure of personal, medical, or other confidential information about other employees to anyone, unless disclosure is required or authorized by law;
9. Avoid making false and derogatory statements about other employees or the School District;
10. Refrain from accepting any gratuity, gift, meal, discount, entertainment, hospitality, loan, forbearance, favor, off-contract time employment or other item, offered on the basis of the employee's employment with the District, and exceeding in fair market value one-hundred-dollars (\$100), excluding approved educational or employment-related awards, honoraria, plaques, trophies, and prizes;
11. Avoid conduct connected with the performance of official duties that is improper or illegal, or which creates the appearance of impropriety or illegality;
12. Become familiar with and abide by the Board's policies related to sexual harassment of employees, and avoid sexual harassment of any school employee, any school visitor, and anyone else whom he or she might encounter in the course of official duties, by any verbal or physical conduct of a sexual nature - including unwelcome sexual advances or requests for sexual favors, and the use of any sexually-oriented jokes, innuendos, names, or references -- and avoidance of any possession, display, or distribution of sexually-oriented materials or information at school except any that is part of the curriculum;
13. Refrain from engaging in public displays of affection, even with consenting adults, while on school property, during school-sponsored activities, and during school transportation to and from such activities;
14. Use educational facilities and property only for purposes related to the legitimate school-related business for which they are intended, consistent with applicable policy, law and regulation, and avoid use of public school facilities or property to conduct personal business or personal affairs;
15. Not discriminate on the basis of race, age, religion, color, national origin, ancestry, sex or gender, pregnancy, sexual orientation, gender identity, physical or mental handicap, serious medical condition, disability, spousal affiliation, military status in employment or the provision of services of any school employee or any other person with whom he or she has any dealings or contact in the course of official duties;
16. Avoid all outside employment which conflicts with school employment duties, or which uses confidential or privileged information obtained from public

school employment, or that impairs the employee's physical ability to perform school employment duties;

17. Refrain from changing or altering, and from encouraging or assisting anyone else to change or alter, any record or document with the intent to conceal or confuse a fact in connection with:
 1. Official school duties;
 2. Another person's official school duties;
 3. Any standardized or non-standardized testing;
 4. Any school application or disclosure process; and
 5. Any submission to any state or federal regulatory authority.
18. Avoid knowingly engaging in any conduct or making any statement that would:
 - a. Breach the security of any standardized or non-standardized test;
 - b. Omit all or part of the testing instructions of any standardized or standardized test;
 - c. Assist students in obtaining services or benefits to which they do not qualify or are not entitled;
19. Avoid engaging in violent, abusive, indecent, profane, boisterous, disruptive, unreasonably loud, or otherwise disorderly conduct such as would tend to disturb the peace or interfere with or obstruct the lawful mission, processes, procedures or functions of the schools or the School District while on school property, while present at a school activity, and during school transportation to or from such activities;
20. Refrain from violent, threatening, or unprofessional conduct toward other employees, students, supervisors, parents, members of the school community, members of the general public, and others with whom the employee has contact in connection with his or her duties;
21. Avoid engaging in any behavior prohibited by the state's criminal code or federal law, and in conduct that may result in criminal penalties, civil fines, or similar sanctions;
22. Respond in a prompt, direct, and professional manner to lawful directives, instructions, and requests from supervisors or administrators.

5.3.3. PENALTIES FOR FAILURE TO COMPLY WITH CODE OF ETHICS AND CONDUCT

The Board of Education finds that adherence to this Code of Ethics and Conduct has a significant bearing on a school employee's competence, turpitude, or the proper performance of his or her duties. Although the Code of Ethics and Conduct is intended to provide a valuable framework of personal ethics to assist employees in their interactions with colleagues, students, parents, and others, the Code of Conduct also sets minimal standards of accepted conduct with which all employees are expected and required to comply.

The failure to abide by the standards of ethical behavior and conduct set forth in the Code of Ethics and Conduct may constitute just cause for discipline-including termination or discharge -of personnel subject to this Policy, by action of the Superintendent of Schools in accordance with applicable procedural requirements.

The failure to abide by the standards of conduct set forth in this Policy shall constitute insubordination and/or misconduct, and shall be considered conduct outside the normal scope of duties of school personnel and, thus, not subject to the procedures for correction of unsatisfactory work performance set forth under NMAC 6.69.2 and the employee will be subject to discharge or termination for misconduct as set forth in N.M. Stat. Ann. ' 22-10A-24 and ' 22-10A-27 (2003).

After final action is taken to discharge or terminate the employment of any licensed or certified school employee, or any other person providing instructional services in a school who does not hold a standard license but whose presence was authorized by the New Mexico Public Education Department through a waiver, substandard license, substitute license, or an educational plan approved by the Public Education Department, when such discharge or termination of employment is based in whole or in part upon a violation of this Code of Ethics and Conduct, the Superintendent or designee shall report such discharge or termination of employment to the Licensure Unit of New Mexico Public Education Department for possible license suspension or revocation as the Public Education Department determines to be appropriate.

5.3.4 EMPLOYEE AND STUDENT RELATIONS POLICY

1. The effective education of our students requires a school environment in which students are safe and secure. Employees of the School District are encouraged to take a sincere professional interest in students of the School District. However, professional ethics requires that staff members avoid social situations through which they could exploit their positions of authority over students and in which they may be perceived as doing so.
2. Therefore, employees shall not use their positions, their influence, or their authority over students to make personal demands upon students unrelated to the purposes of their education. Employees shall not become intimately involved with students, shall not engage in or respond to romantic, sexually oriented, or other intimate

relations, or activities with students, nor participate in any unethical behaviors or conduct with them as prohibited by Board Policy No. 5.3.2.

3. All employees, as part of their regular duties, shall be watchful of the welfare of students, particularly with respect to circumstances that suggest abuse, including the sexual victimization of students or violations of Paragraph 2 of this Policy, by other school employees. Employees are required to report suspected violations of this policy to their immediate supervisor as soon as practical. All reports of possible violations of this policy or abuse including sexual misconduct against students by school employees shall be promptly and fully investigated by the Administration according to the procedures set forth in the School District's Sexual Harassment of Students by Employees Policy No. 5.12.5.
4. Violations of this Policy by school employees may result in employee discipline up to and including termination or discharge, subject to any applicable procedural requirements.

5.3.5. PERSONAL APPEARANCE AND DRESS CODE FOR ADMINISTRATORS, CERTIFIED PERSONNEL, INSTRUCTIONAL ASSISTANTS AND SUBSTITUTE TEACHERS

RATIONALE

1. To present or create a professional or identifiable appearance for students and the public, and
2. To promote a positive working environment and limit distractions caused by outrageous, provocative or inappropriate dress.
3. The Board of Education finds that since administrators, certified personnel, instructional assistants and substitute teachers serve as role models, they should maintain professional standards of dress and grooming. Just as overall attitude and instructional competency contribute to a productive learning environment, so do appropriate dress and grooming. The Board encourages staff to wear clothing that demonstrates their high regard for education and presents an image consistent with their job responsibilities. Dress should meet or exceed the standards set for students.
4. Aim for a classic and understated look when selecting your business wear for the day. Pick clothing that is comfortable, yet communicates a professional attitude.
5. Every item of clothing can be worn in a manner that makes it inappropriate for the workplace. For example, some items can be too revealing. Clothing should be clean, without holes or frayed areas. Appropriate shoes are to be worn at all times. Focus on

showing appropriate images that demonstrate a professional look; you are expected to present a professional appearance and demeanor.

6. Shirts with inappropriate graphics, sayings, t-shirts, **holey** blue jeans, sweatpants, wind suits, jogging suits, shorts, spandex, or other form fitting pants and miniskirts are inappropriate as are dresses with spaghetti straps unless covered with a jacket. Women's apparel may be worn approximately knee length. Hats should not be worn in buildings unless:

EXCEPTIONS

Exceptions to the above standards include **medical conditions**, physical education teachers and vocational teachers when necessary to implement the School District's curriculum. However, it is recommended that the guidelines involving collared shirts and t-shirts be followed.

Other exceptions e.g., field trips, may be made with the approval of the building principal.

If questions arise, building supervisors will make the final determination of what is considered professional dress.

5.3.6. POLITICAL ACTIVITIES/COMMUNITY RELATIONS

The Board of Education urges every staff member to become an active participant in community affairs and to set an example of good citizenship.

5.3.6.1. Political Activities

Each employee:

1. May assume full political and citizenship responsibilities, but shall refrain from exploiting the institutional privileges of his professional position.
2. Shall make it clear while engaged in political activity that individual comments and actions in no manner represent the view of the District.
3. Shall not engage in partisan political activity on District premises during hours of professional assignment.
4. Shall seek the approval of the Superintendent of Schools when a political activity is planned on school premises.

5. Shall counsel with the Principal, the Superintendent and the Board prior to announcing for a public office in order to determine if any conflicts are apparent between his responsibilities to the School District and the position of the public office

5.3.6.2. Political Campaigning

Political literature shall not be distributed through the Schools to staff members, students or sent home to parents.

Candidates will not be permitted to campaign during School hours on School property. A person serving in a high elective office, such as senator, representative, governor, etc., will be permitted to speak at assemblies in recognition of the office they hold.

5.3.6.3. Employee Time to Vote

Any employee whose work day begins more than two (2) hours after the time of opening the polls or ends more than three (3) hours prior to the end of closing the polls will not be allowed time off to vote. If the above conditions do not apply, the employee will be allowed time to vote as long as the time to vote does not interfere with the instructional program.

5.3.6.4. Public Appearances

Staff members appearing before the public or professional groups may not speak for the Board unless specifically authorized to do so. This policy is not to prohibit School personnel from speaking on behalf of the School Districts, its policies, rules and regulations, philosophies, and programs.

5.3.7. ENDORSEMENTS AND SALES SOLICITATIONS

The Superintendent will ensure that staff members are not disturbed during the duty day by solicitors and in turn will encourage staff members to refrain from solicitations which involve the School District, other than for authorized purposes. Solicitations of staff members must be cleared through the Superintendent or his or her designee.

5.3.7.1. Endorsements

Employees will not recommend, endorse, or require students to purchase any product, material, or service in which they have a financial interest or that is sold by a company that employs the School District employee during non-school hours. Employees will not recommend or require students to purchase a specific brand of school supplies if there are other brands that are equal and suitable for the intended instructional purpose.

5.3.7.2. Sales STOP

Employees will not use their positions with the School District to obtain an audience with any School District employee during school hours for the purpose of attempting to sell products or services.

5.3.7.2.1. Employee/Immediate Family Members Doing Business With the District

Pursuant to the provisions of the **New Mexico Procurement Code (N.M. Stat. Ann ' 13-1-190 and ' 13-1-193) (as amended or recoded in the future) and the New Mexico Public School Code, no school employee or member of an employee's immediate family (as defined in N.M. Stat. Ann. ' 13-1-62, (1978))** shall directly or indirectly sell or be a party to any transaction to sell any instructional materials, furniture, equipment, insurance, school supplies, or work under contract to the School District with which they are associated or employed when the employee or member of the employee's immediate family has a financial interest in the transaction.

No employee of the School District shall receive any commission or profit from the solicitation or sale of investment securities or insurance to any other employee under their supervision.

The Board of Education reserves the right to grant a waiver pursuant to N.M. Stat. Ann. ' 13-1-194 (1978) from unlawful employee participation in a procurement process pursuant to N.M. Stat. Ann. ' 13-1-190 (1978) or contemporaneous employment pursuant to N.M. Stat. Ann. ' 13-1-193 (1978) upon making the following findings:

- a. The contemporaneous employment or financial interest of the employee has been publicly disclosed;
- b. The employee will be able to perform the procurement functions without actual or apparent bias or favoritism; and
- c. The employee participation is in the best interest of the District.

The Board of Education delegates to the Director of Business/Finance the authority to determine when it is in the best interest of the School District to waive unlawful employee participation. Upon such determination, a disclosure memo, together with the determination, which states the terms of compliance, shall be completed by the participating employee and the Director of Business/Finance. This documentation shall remain in the procurement file maintained by the School District's Business/Finance Department. The Board of Education shall be advised of all such waivers as soon as practical.

5.3.7.3. Staff Directories

No person shall be allowed to use, sell or distribute faculty, staff, and/or student lists from the School District for the purpose of marketing goods or services by phone or mail. It is also prohibited to use such lists to obtain access to families for the purpose of solicitation.

Staff and faculty directories containing names, addresses, telephone numbers, social security numbers and other similar identifying information may only be used for legitimate educational purposes if approved by the Superintendent or his or her designee.

Any person receiving a solicitation may bring an action against a person who violates this New Mexico and as provided under state law. Any employee violating this Policy may be subject to discipline by the Superintendent of Schools, including discharge or termination.

5.3.8. GIFTS

- a. An employee will not accept or solicit any gift, favor, service, or other benefit that could reasonably be construed to influence the employee's discharge of assigned duties and responsibilities.
- b. An employee will not have a personal financial interest, a business interest, or any other obligation that in any way creates a substantial conflict with the proper discharge of assigned duties and responsibilities or that creates a conflict with the best interest of the School District.
- c. An employee who believes he or she has or may have a conflict of interest will disclose the interest to the Superintendent or his or her designee, who will take whatever action is necessary, if any, to ensure that the School District's best interests are protected.
- d. Any employee violating this Policy may be subject to discipline by the Superintendent of Schools, including discharge or termination.

5.3.9. PROFESSIONAL DEVELOPMENT

1. The Board of Education recognizes that staff members should continue to improve their competence during their professional service. The Board of Education expects the Superintendent of Schools to promote opportunities for staff development and for staff members to take advantage of these opportunities. To the extent feasible, the Superintendent shall establish procedures by which staff members can receive proper recognition for efforts to improve themselves professionally.

2. The Superintendent of Schools shall ensure that all opportunities for staff development comply with Title IX of the Education Amendments of 1972 (20 U.S.C. ' 1681 *et seq.*) and free from gender discrimination.

5.4. SCHOOL PERSONNEL

DEFINITIONS

- A. A Certified school instructor means a teacher or instructional support provider.
- B. A Certified school employee or a certified school personnel means a licensed school employee.
- C. A Licensed school employee means teachers, school administrators and instructional support providers.
- D. A Instructional support provider means a person who is employed to support the instructional program of a school district, including educational assistant, librarian, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, interpreter for the deaf and diagnostician.
- E. A Teacher means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program.
- F. A School employee means licensed and non-licensed employees of the District.
- G. A School Principal means the chief instructional leader and administrative head of a public school.
- H. A School Administrator means a person licensed to administer in the District and includes school principal and central office administrators.
- I. A Substitute Teacher means a person who holds a State-issued certificate to substitute for a teacher in the classroom.
- J. A Discharge means the act of severing the employment relationship with a certified school employee prior to the expiration of the current employment contract.
- K. A Terminate means, in the case of a certified school employee, the act of not reemploying an employee for the ensuring school year and, in the case of a non-certified school employee, the act of severing the employment relationship with the employee.

5.4.1. DUTIES

Each certified school instructor in the School District shall:

1. Present a valid certificate to the School District or its designee within three (3) months after the beginning of the school year;
2. Enforce all laws, regulations and policies applicable to the School District;
3. If instructing, teach the content and use the instructional materials prescribed by the School District;
4. Exercise supervision over students on property belonging to the School District while the students are under control of the School District; and
5. Furnish reports to the School District's Administration as may be required state law, federal law or Board policies.

5.4.2. CERTIFICATION

- A. All certified personnel must hold a valid New Mexico license for their assigned position. The original must be presented to the Superintendent for verification. A photocopy of the original license will be made by the Superintendent and placed in the personnel file. It is the Employee's responsibility to secure the license(s) and to keep it valid.
- B. Any employee teaching, supervising an instructional program, counseling or providing special instructional services in the School District, or any administrator administering in the School District without a valid certificate after the first three months of the school year shall thereafter forfeit all claim to compensation for services rendered. (NMSA 22-10-3).

5.4.3. EDUCATIONAL ASSISTANTS

Educational Assistants who provide instructional support must meet the requirements of the **current PED mandates or Acts** by June 30, 2006 and as amended. This includes Educational Assistants who: (1) provide one-on-one tutoring; (2) assist with classroom management; (3) provide instructional assistance in a computer laboratory; (4) conduct parental involvement activities; (5) provide support in a library or media center; (6) act as a translator; (7) provide instruction support services under the direct supervision of a teacher; or (8) provide any service to a special education student.

5.4.4. COLLEGE TRANSCRIPT AND VERIFICATION OF PREVIOUS TRAINING AND EXPERIENCE

Training and experience earned prior to the first day of school of the current academic school year and used for salary purposes must be properly verified by official transcripts and verifications of employment by October 1 of the current academic school year. It shall be the responsibility of all employees to take all necessary steps to ensure official transcripts and verifications of applicable experience is received by October 1. Any such verification received after that time will be credited to the next year's salary. Late hires will be allowed six (6) weeks from date of hire in which to provide these documents. The employee is solely responsible for obtaining the official transcript, including any costs associated with obtaining official transcripts.

5.4.5. MILITARY EXPERIENCE

Certified personnel who are eligible to receive salary schedule consideration for military service must present their discharge papers (DD-214) to the Director for Human Resources. The information will be placed in the employee's personnel file.

5.4.6. PROFESSIONAL STATUS

Teaching, supervising an instructional program, counseling, or providing special instructional services in the School District or administering in the School District is recognized as a profession with all the rights, responsibilities, and privileges accorded professions having their first responsibility to the public they serve. The primary responsibility of his/her profession shall be to educate the children of this School District and to improve the professional practices and ethical conduct of its members. (NMSA 22-10-9)

5.4.7. SCHOOL ADMINISTRATORS IMPROVEMENT TRAINING

All School District Administrators are required to complete a training program to improve their administrative skills and instructional leadership every two (2) years or as prescribed by state law. (NMSA 22-10-3.1).

5.4.8. REDUCTION-IN-FORCE (R.I.F.)

5.4.8.1. Authority

Pursuant to NMSA 1978 ' 22-5-14 (2003), the Superintendent has the authority to discharge licensed school personnel during the term of their contracts or to terminate licensed school instructors and non-licensed school employees with rights created by NMSA 1978, Section 22-10A-24(C) (hereafter "tenured employees"), after notice and a hearing when a reduction in such personnel is required as a result of circumstances justifying a reduction in force as specified herein.

Reduction-in-force (R.I.F.) is "just cause" for discharge of licensed school personnel and terminations of tenured employees, when established pursuant to this policy. This policy is adopted as the procedure by which reductions in personnel who are covered by the policy may be accomplished, within the context of the District's general personnel policies.

5.4.8.2. Board Discretion

The Board is vested with the discretion to develop educational policies for the District, so long as the state educational standards and statutorily-required standards are met. The Superintendent, in carrying out the educational policies of the Board and administering and supervising the District, shall exercise his or her discretion in accordance with this policy in determining when decreased enrollment, financial exigency or other causes justify a reduction in personnel.

5.4.8.3. Grounds Justifying Reduction In Force

Situations that justify a R.I.F. shall include, but are not limited to, the following:

- A. Decrease in student enrollment or reduced student demand for or participation in programs or activities;
- B. Decrease in revenue:
 - 1. Because of decrease of student enrollment;
 - 2. Because of loss or reduction of tax revenues;
 - 3. Because of reduction of state, local, or federal financial support;
 - 4. Because of inflation reducing the value of revenues received or significantly increasing costs of operation;
- C. Change in the educational program of the district, as determined by the Board, in its good-faith exercise of discretion;
- D. Consolidation or de-consolidation involving the district;
- E. Court orders;
- F. Orders of the Secretary of Education;
- G. Legislative mandates;

H. Unanticipated financial or programmatic exigencies identified by the Superintendent which warrants initiation of a RIF process.

5.4.8.4. Good Faith Determination

The Superintendent shall exercise discretion in good faith, and determinations that a R.I.F. is necessary shall be based on bona fide educational considerations, and shall not be a subterfuge for discharging or terminating licensed personnel without just cause or for impermissible reasons.

5.4.8.5. Timing Of Reduction In Force

A R.I.F. may occur at any time during the calendar year when the Superintendent, in his or her discretion, determines that it is justified and the procedures prescribed herein are applicable and are followed. A R.I.F. may be based upon projections of future enrollment, revenues or expenses, and the subsequent receipt of more revenue than expected or a subsequent saving of projected expenses shall not invalidate any actions previously taken in good-faith reliance on such projections, nor shall it require the reemployment of any employees who were released on the basis of such projections.

5.4.8.6. Determination Of Need For Reduction In Force

Except as required by legislative mandate or orders of the State Secretary of Education and 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 R.I.F., in order that notice be given to licensed personnel of the possibility of a R.I.F. and so that consideration be given to means by which a R.I.F. may be avoided. Preparation of a R.I.F. Plan shall not be necessary if the reductions can be accomplished through attrition (i.e., resignations, retirements, etc.), or by termination of a sufficient number of non-tenured staff.

A. Preparation of R.I.F. Plan

When the Superintendent concludes that a R.I.F. is necessary, a plan for R.I.F. shall be developed for presentation to the Board. The R.I.F. 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 costs, programs and personnel while still providing the educational program required of school districts and the particular educational needs of the district. Where circumstances warrant, a R.I.F. plan may address particular programs, departments, school sites, content areas or activities if the causes for the R.I.F. predominately impact that aspect of the educational program. Such impact shall be described in the R.I.F. plan. The R.I.F. plan shall include, but need not be limited to, the following:

1. A detailed description of the cause or causes requiring a R.I.F.;

2. A description of all adjustments already made by the Administration in an attempt to avoid a R.I.F., if any (e.g., reduction by attrition, cuts in non-licensed staff, abolition of non-essential services or activities such as extra-curricular programs, etc.)
3. A designation of the part or parts of the total educational program or particular program or activity in which the R.I.F. is proposed and the number of positions proposed to be reduced in each program or activity;
4. A designation of non-essential services or activities which are to be retained, with a justification for retaining such programs; and
5. A discussion of alternatives (if any) considered by the Superintendent with an explanation as to why such alternatives were rejected.

The Superintendent shall include in the R.I.F. plan a listing of all extra-curricular, co-curricular and athletic programs or activities which may be considered for rating points in the proposed R.I.F. rating sheet and the proposed weight to be given each category of such programs or activities for discussion at the public meeting at which the R.I.F. plan is considered.

B. Board Considerations

The Board shall consider the recommendations of the Superintendent for the adoption of the R.I.F. plan at a duly-called board meeting, the public notice of which announces that a R.I.F. 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, as the Board, in its discretion, deems appropriate. The Board may propose modifications to the plan recommended by the Superintendent as it deems appropriate, provided that the Superintendent shall be the final decision-maker on the content and scope of the plan after giving due consideration to the Board's proposals.

If a mid-year R.I.F. is proposed which would require the discharge of tenured certified staff, the Superintendent and Board shall adopt a joint determination that as to the projected financial burdens to the District in the future and concluding the District cannot survive financially for the fiscal year already underway, if the R.I.F. is not carried out.

Any final plan for a R.I.F. shall be made available to all staff, by providing copies thereof in the office of each building principal and at the Superintendent's office, within two (2) working days after the final plan has been approved by the Superintendent.

C. Adopted Plan

If a R.I.F. plan is adopted, the Board shall not be required to deplete its operational cash balances maintained or carried over as permitted by NMSA 1978 '22-8-41C and Section 71, Laws 2003, Ch. 153 in order to avoid the R.I.F., if the Board, in its discretion, determines that the cash

balance must be maintained at the level determined by the Board, in order to cover other permitted expenditures or as a contingency for unforeseen expenditures or emergencies.

Based upon the R.I.F. plan approved by the Board, the Administration shall perform a study of the School District's personnel to determine which person or persons must be wholly or partially terminated or discharged in order to implement the plan. The primary concern to be applied in making the R.I.F. selections shall be the Board's interest in maintaining a sound and balanced educational program which is accredited and meets state and federal or regulatory requirements or standards, as well as the educational and extra-curricular program established for the District. In performing the study, the School Administration shall prepare a rating sheet and apply a point scale using the criteria applicable to the affected personnel specified in the following section.

5.4.8.7. Criteria For Selection Of Employees For R.I.F.

A. Licensed Personnel

1. Licensing as Qualification/Substandard Licenses.

Substandard licensure is inferior to full licensure, and a person who is fully licensed to teach within the presently assigned content area shall be retained in preference to a person holding a substandard license.

- a. A person holding a "teaching waiver" of licensure requirements approved by the Public Education Department (per NMSA 1978 Section 22-10A-14B) shall be treated as having substandard licensure for the purpose of this policy, and shall receive zero (0) points for licensure in the survey and on the rating sheet.
- b. A licensed person working in the affected content area pursuant to an Assignment waiver (per NMSA 1978 Section 22-10A-14C), but possessing full licensing in another content area not affected by the RIF shall be allocated five (5) points on the rating sheet.
- c. A person who is fully licensed and teaching in the affected content area shall be allocated ten (10) points on the rating sheet.

2. Endorsements

Licensed personnel possessing teaching endorsements recognized by the Public Education Department beyond those requested or required as qualifications for the individual's current assignment or content area shall receive an additional two (2) points per current valid endorsement, up to a maximum of six (6) points.

3. Extracurricular Licensing/Experience/Assignment

Licensing, experience and current assignment in the extra-curricular or co-curricular activities which are to be retained as an integral part of the district's overall program for its students may be considered as a qualification requirement, in addition to licensure status, in making selection of personnel to be released under this policy. Head coaches or trainers possessing current licensing as a coach or trainer who are also certified employees of the district may be allocated two (2) points for each head coaching or training assignment up to a maximum of six (6) points for all current assignments. Licensed assistant coaches who are also certified employees of the district may be allocated one (1) point for each assistant coaching assignment up to a maximum of three (3) points for all current assistant coaching assignments.

The Board shall also possess the discretion to grant up to, but no more than, three (3) points for current extra-curricular or co-curricular assignments, requiring specialized knowledge, training, expertise, or significant time commitment, but for which licensing is not available, in programs or activities which the Board has determined to retain as an integral part of its overall program.

No employee may receive in excess of ten (10) total points on the rating sheet for extracurricular, athletic or co-curricular assignments. The Administration shall include in the proposed R.I.F. Plan a listing of all extracurricular, athletic and co-curricular programs or activities which may be considered for rating points in the proposed R.I.F. rating sheet and the proposed weight to be given to each category of such programs or activities for discussion at the Board meeting at which the R.I.F. Plan is considered.

4. Service in District

Where cumulative scores on the rating sheet are equal between two or more licensed school instructors being considered for termination or discharge, tenured licensed school instructors shall be retained in preference to licensed school instructors who have been employed by the district for less than three consecutive school years of service.

Each licensed individual considered for termination or discharge shall be awarded one (1) point for each year of full-time service during the most recent period of uninterrupted service with the district, prior to the current year, excluding approved extended leaves of absence, up to

5. Education

The amount of credit for education shall be determined based on degree and additional hours:

- | | |
|----------------------|----------|
| 1) B.A. | 1 point |
| 2) B.A. + 15 | 2 points |
| 3) B.A. + 45 or M.A. | 4 points |

- | | |
|-------------------------|-----------|
| 4) M.A. + 15 | 6 points |
| 5) M.A. + 45 and higher | 8 points |
| 6) Ed. D. and Ph.D. | 10 points |

6. Performance

[Optional The School Superintendent shall determine whether this criterion shall be used at the time the R.I.F. Plan is approved.]

The current supervisor of each licensed school instructor considered for termination or each licensed person considered for discharge shall rate the relative performance of each such person on a rating form to be prepared by the Superintendent, or under his/her direction. Such rating form may be based on the District's standard evaluation form(s) rating teacher competencies but may include additional competencies identified by the Superintendent which reflect his or her judgment as to the attributes necessary for success in the particular program(s) affected by a R.I.F. The rating form shall include not more than a total of ten (10) standard and specific competency areas, shall specify the score for each performance category or attribute, and shall allow for a maximum score of twenty (20) points. The supervisor(s) may consult with the Superintendent concerning the implementation of the evaluation. The supervisor(s) shall complete the rating forms and return them to the Superintendent within the time specified for completion of the evaluations a maximum of twenty (20) points.

If different individuals considered for a R.I.F. have different supervisors, the supervisors may consult with each other and/or with the Superintendent to insure that the rating system is applied uniformly. There shall be no requirement of observation of performance by a supervisor specifically for the purpose of completing the rating form; however, each supervisor shall review prior evaluations of the individuals considered for a R.I.F. for a period of the three (3) years immediately prior to the R.I.F, if available. When a supervisor lacks familiarity with an individual's performance (*e.g.*, a new supervisor), the Superintendent may assign the evaluation to a present or past District administrator or supervisor who has greater familiarity with the individual's performance. The Superintendent may devise such other measures as he or she deems necessary to address with situations where implementation of the performance rating cannot occur in the normal manner, so long as such measures are rationally designed to award points to licensed personnel based on the employee's performance.

B. Selection Based on Scores

The Superintendent shall total the points allocated based on the criteria specified above. The person with the lowest score shall be the person who is released by termination or discharge unless such action would have a serious and detrimental effect on the total educational program. In such event, the Superintendent may select a higher scoring person for termination or discharge but shall prepare a written justification for such action in the best interests of the District, along

with the rating sheets for such positions. The computations of the Superintendent, plus the rating forms on the persons considered for release, shall be available for review by the person released.

C. Transfers/Reassignment

If, as a result of the application of the selection criteria, a person is selected to be released from the affected program, but such person ("the affected person") is also licensed and qualified for another program(s) within the District, the person shall be considered for transfer or reassignment to such program(s). The fact that there are one or more other licensed employees within the program affected by the R.I.F. who scored higher than the affected person, and that such person(s) may be licensed and qualified to teach or administer in other programs in the District, shall not require that the higher scoring persons be transferred or reassigned to the other program or programs, even if there is a vacancy in the other program or programs. The transfer/reassignment obligation shall not arise until after the selection of the person or persons to be released from the program affected by the R.I.F. and shall only apply to the person or persons selected for release. Consideration of transfer or reassignment of the affected person shall be governed by the following criteria:

- A. Existing Vacancy. If, upon the effective date of the termination or discharge due to a R.I.F., there is an existing vacancy in another program for which the affected person is licensed and qualified, he or she shall be transferred or reassigned to that vacant position. There shall be no obligation to create a vacancy to accommodate such person.
- B. No Existing Vacancy. Where the affected person is licensed and qualified for another program or programs in the District, but all such positions are currently filled, the selection criteria described above, subject to the modifications described below, shall be applied to determine whether the affected person will be transferred or reassigned to another program and another person, currently employed in the other program, shall be released.
 - a. If the person is fully licensed for a position in another program or an administrative position but has not actually taught in such program or held such an administrative position during any part of the preceding five (5) school years, such person shall not be considered qualified for transfer or reassignment to the other position.
 - b. If neither the Superintendent nor the current supervisor of the program has observed the person being considered for transfer or reassignment performing the duties of the other program, it is impractical for the relative performance of the person being considered for transfer or reassignment and the person or persons currently teaching or administering in the program to be rated based on direct observation. Under such circumstances, the Superintendent or his/her designee shall make a judgment as to the likely performance of the person being considered for transfer or reassignment and assign the performance score which may be used in the selection process in comparison to the person or persons currently employed in the other program. The Superintendent or designee shall

consider the affected person's performance in other programs and his/her knowledge of all persons in the program in question in making the judgment, and may consult with other knowledgeable persons in making this determination.

Each licensed instructor or administrator discharged and each tenured teacher terminated pursuant to this policy shall be entitled to the procedural rights provided under the applicable statutes and regulations of the State Secretary of Education governing discharge of licensed school personnel or the termination of tenured teachers. The written decision of the Superintendent, to the extent required by statute and regulation, shall clearly specify that the termination or discharge resulted from a R.I.F. and not from any cause personal to the person released.

D. Non-Licensed Personnel

Seniority shall be the primary criterion in determining which non-certified personnel shall be recommended for complete or partial termination in order to implement the R.I.F. Plan. More senior non-certified personnel ordinarily shall be retained in preference to less senior non-certified personnel within the same job category. However, where multiple positions and programs are affected by the R.I.F., the School Administration may prepare a rating sheet which includes the following criteria in making the selection:

1. **Specialized Qualifications/Licenses:** Specialized training/certification or licensing directly related to the current job duties of the non-certified employee (e.g., electrician's license held by maintenance employee) may be allocated up to, but no more than, five (5) points. This factor excludes credit for extra-curricular licensing referred to in the next section.
2. **Extra Curricular Licensing/Assignments/Experience:** Licensing/training in extra-curricular activities, such as coaching or training in athletic programs, which are to be retained as an integral part of the District's overall program for its students, may be considered as a qualification requirement in making selection of personnel to be released under this policy. Head coaches and trainers who possess current licensing as a coach or trainer may be allocated up to, but no more than, two (2) points for each head coaching or training assignment, up to a maximum of six (6) points for all current assignments. Licensed assistant coaches, or service in current extra-curricular assignments requiring specialized knowledge, training expertise, or significant time commitment, may be allocated up to, but no more than one (1) point for each assistant coaching assignment, up to a maximum of three (3) points for all current assignments.
3. **Service in District:** Each noncertified employee rated shall be awarded one (1) point for each complete school year of full-time service during the most recent period of uninterrupted service with the District, up to a maximum of twenty (20) points. Periods of extended leave of absence without pay shall not be included. Where cumulative scores are equal, tenured, noncertified individuals (those who have completed three (3) full consecutive years of service in the District) shall be retained over non-tenured, noncertified individuals.

4. **Performance:** [Optional To be used only if directed by School Superintendent]. If two or more individuals have equal ratings on the above criteria, the current supervisor of each person classified as support staff who is considered for termination shall rate the relative performance of such person on a rating form to be prepared by the Superintendent. Such rating form will be designed based on the District's performance evaluation form for non-certified employees. The rating form will allow for a maximum score of twenty (20) points. The forms will be returned to the Superintendent for tabulation.
5. **Selection Based on Scores:** The Superintendent shall total the points for service and performance. The person with the lowest score shall be the person who is released. The computations of the Superintendent, plus the rating forms on the persons considered for release, shall be available for review by the person released.
6. **Transfer/Reassignments:** If, as a result of the application of the selection criteria, a person is selected to be released from the affected program, but such person is tenured and qualified for another program within the District in which a vacancy exists, that person shall be considered for transfer/reassignment to the other program.
7. **Termination:** Each non-licensed employee terminated pursuant to this policy shall be entitled to the procedural rights provided under the applicable New Mexico statutes and regulations governing the termination of non-licensed personnel. The written decision of the Board, to the extent required by statute and regulation, shall clearly specify that the termination resulted from a R.I.F. and not from any cause personal to the person released.

E. Appeal

Appeals to an independent arbitrator from termination or discharge pursuant to this policy are governed by the provisions of NMSA 1978, Section 22-10A-25, NMSA 1978 22-10A-28, respectively, and any applicable regulations of the State Secretary of Education.

F. Recall of Released Staff

For a period of one (1) year after the effective date of the discharge or termination of any employee pursuant to this policy, the Superintendent shall offer to such person any position(s) which becomes available for which such person is licensed and qualified, provided that such person has complied with the requirements specified below.

1. Every person discharged or terminated under this policy who wishes to be considered for recall, in the event that an opening occurs, must file with the Superintendent, within thirty (30) days after the effective date of the discharge or termination, a written statement indicating a desire to be considered for recall and

providing an address at which the person may be contacted. Such person must notify the Superintendent of any change in address within ten (10) days after changing residences in order to insure proper notification in the event of a recall.

2. In the event that more than one interested person who was discharged or terminated within the calendar year prior to recall is qualified for the position by experience, training, and/or licensure to which a person will be recalled, the selection criteria of this policy will be applied to determine which person is to be recalled. The points accrued for "Service in District" and "Performance" shall be the same as when the persons were discharged or terminated, but additional points for any additional education earned after the discharge or termination which is directly related to the District's educational program shall be credited and considered.
3. Any person selected for recall hereunder shall receive written notification of the recall, by certified mail, at the address provided. The recalled person must accept the position offered through recall in writing. Such acceptance must be received in the Superintendent's office within fifteen (15) calendar days after mailing of the recall notice to the person. Rejection of the offer, in writing or by failure to timely respond, shall result in forfeiture by the recalled person of any further recall rights under this policy. Thereafter, an offer of recall will be made to the next person qualified to be recalled, or if there is none, the position will be filled by another qualified applicant.
4. Any person recalled pursuant to this policy shall have all accrued but unused sick leave restored and be given credit for all years of actual service in the District for salary purposes.
5. After the one (1)-year recall period has expired, any person discharged or terminated under this policy shall no longer have any right to be recalled. Such persons who wish to be reemployed thereafter shall file applications for employment and will be treated as would any other applicant for a vacant position.

In the event legislation is passed which requires the Superintendent to reduce licensed school personnel, for any reason, the Superintendent shall follow the legislative procedures, if any, in lieu of this policy.

In the event the State Secretary of Education orders are entered which have the effect of revising the District's boundaries to exclude school facilities previously operated by the District, reducing the District's enrollment, or reassigning licensed school personnel to another District, or other state board orders resulting from exercise of its legislative powers, then the procedures described in the State Secretary's order for transfer of school facilities, students, and personnel shall be followed in lieu of this policy. Unless a different procedure is mandated by law, the termination or discharge of school employees in compliance with a

State Secretary order shall be governed by NMSA 1978, Statutes 22-10A-24, 22-10A-25, 22-10A-27, and 22-10A-28, if applicable.

5.4.9. EDUCATOR SUPPORT SYSTEM

All certified school instructors (including certified support personnel) with less than four (4) years of experience who are initially employed by the Mountainair Public School District, will be required to participate in the **mentor program** for a minimum of two consecutive years. All Level II and Level III certified school instructors (including certified support personnel) with four (4) or more years of experience who are initially employed by the School District will be required to participate in the **mentor program** for one year.

All certified school instructors and certified support personnel employed for the first time or re-employed by the Mountainair Public Schools must attend an orientation seminar of up to two (2) days prior to the beginning of the school year as a condition of employment without additional remuneration.

5.4.10. NON-INSTRUCTIONAL DUTIES

Certified employees shall not be required to perform non-instructional duties except in emergency situations as defined by the New Mexico Public Education Department. Non-instructional duties shall mean noon hall duty, noon grounds duty, and noon cafeteria duty.

An emergency situation may exist if a school administrator determines that the supervision assigned to a non-instructional activity is insufficient or absent. In such instances, certified personnel may be temporarily assigned to non-instructional activity during the existence of the emergency situation if no other alternatives for supervision are available. Documentation of the cause and duration of any such assignments must be maintained until June 30 of that school year.

Certified employees may voluntarily work with individual students or groups during their designated meal period (e.g., student field trips, tutoring, sponsorships, etc.).

A certified employee who agrees to perform a paid non-instructional duty or accepts an increment(s) for duties performed during the duty free meal period must sign a waiver. This waiver will be maintained in the employee's School District personnel file to comply with New Mexico Public Education Department regulations.

5.4.11. CHILD ABUSE, NEGLECT, SUBSTANCE ABUSE TRAINING

All certified school personnel, school nurses and certified education assistants shall be required to complete training in the detection and reporting of child abuse and neglect and substance abuse. This requirement shall be completed **at the beginning of each school year**. (Section 22-10-3[A] NMSA 1978).

5.5. EMPLOYMENT DECISIONS

The Superintendent of Schools will make all personnel decisions regarding the employment of certified and non-certified staff on an annual basis.

5.5.1. NOTICE OF REEMPLOYMENT/TERMINATION CERTIFIED SCHOOL INSTRUCTORS

On or before the last day of the school year of the existing employment contract, the Superintendent of Schools shall serve written notice of reemployment on each certified school instructor employed by the School District. A notice of reemployment shall be an offer of employment for the ensuing school year. The Superintendent of Schools must serve a notice of termination upon the certified school instructor on or before the 14th calendar day prior to the last day of the school year. Failure of the Superintendent to serve an offer of reemployment or notice of termination on a certified school instructor shall be construed to mean that notice of reemployment has been served upon the employee for the ensuing school year according to the terms of the existing employment contract but subject to any additional compensation allowed other certified school instructors of like qualifications and experience employed by the School District.

Nothing in this Policy shall be construed to mean that failure of a Superintendent of Schools to serve a written notice of reemployment or termination shall automatically extend a certified school instructor's employment contract for a period in excess of one school year. (Section 22-10A-22 NMSA 1978 and SBE Regulation 75-7).

5.5.2. REEMPLOYMENT ACCEPTANCE/REJECTION

Each certified school instructor shall return to the Superintendent of Schools a written notice of acceptance or rejection of reemployment for the ensuing school year within fifteen (15) days of:

1. The date written notice of reemployment is served upon the employee;
2. The last day of the school year when no written notice of reemployment or termination is served upon the employee on or before the last day of the school year.

Delivery of the written acceptance of reemployment by a certified school instructor creates a binding employment contract between the certified school instructor and the Superintendent until the parties enter into a formal written employment contract. Written employment contracts between the Superintendent and certified school instructors shall be executed by the parties not later than ten (10) days before the first day of a school year. (Section 22-10A-23 NMSA, (2003).

5.5.3. PROCEDURES FOR TERMINATION OF CERTIFIED SCHOOL INSTRUCTORS

1. The Superintendent of Schools may terminate certified school instructors with less than three years of consecutive service for any reason he or she deems sufficient in accordance with New Mexico Statutes.
2. The Superintendent of Schools may terminate certified school instructors with three or more consecutive years for just cause in accordance with New Mexico Statutes.

APPEALS

When an appeal is filed as provided in N.M. Stat. Ann. " 22-10A-24, 22-10A-25, 22-10A-27, and 22-10A-28, (2003), the Superintendent and Board of Education will follow the procedures as provided in those sections, as amended or recoded in the future.

EXCEPTIONS

As provided in N.M. Stat. Ann. ' 22-10A-26 (2003) the following exceptions apply to N.M. Stat. Ann. " 22-10A-22 through 22-10A-25 (2003), as amended or recoded in the future.

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

5.5.4. TERMINATION DECISIONS REGARDING NON-CERTIFIED SCHOOL EMPLOYEES

- A. The Superintendent of Schools may terminate non-certified school employees who have not completed three (3) consecutive years of service for any reason he or she deems sufficient by serving the non-certified school employee with a written notice of termination in accordance with N.M. Stat. Ann. ' 22-10A-24 (2003).
- B. The Superintendent of Schools may terminate non-certified school employees who have completed three or more years of consecutive service for just cause in accordance with N.M. Stat. Ann. ' 22-10A-24 (2003).

APPEALS

When an appeal is provided for a non-certified school employee under N.M. Stat. Ann. '22-10A-25 (2003), the Superintendent and Board of Education will follow the procedures as provided in those sections, as amended or recoded in the future.

EXCEPTIONS

As provided in N.M. Stat. Ann. '22-10A-26 (2003), the following exceptions apply to N.M. Stat. Ann. "22-10A-24 and 22-10A-25 (2003):

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

5.5.5. DISCHARGE DURING TERM OF WRITTEN CONTRACT -- CERTIFIED SCHOOL EMPLOYEE

- A. The Superintendent of Schools may discharge a certified school employee during the term of their written employment contract only for just cause according to the following procedure:

("Discharge" means the act of severing the employment relationship with an Employee prior to the expiration of the current employment contract.)

("Just Cause" means a reason that is rationally related to an Employee's competence or turpitude or the proper performance of their duties and that is not in violation of the Employee's civic or constitutional rights.)

1. The Superintendent shall serve written notice of intent to discharge on the certified school employee in accordance with state law for service of process in civil actions; and
 2. The Superintendent shall state in the notice of intent to discharge the cause for his or her decision to discharge and shall advise the certified school employee of their right to a discharge hearing before the Board of Education.
- B. A certified school employee who receives a notice of intent to discharge in accordance with Paragraph 1 of this Policy may exercise his right to a hearing before the Board of Education by submitting to the Superintendent written notice of that election within five (5) working days of receipt of the notice to discharge.
- C. The Board of Education shall hold a discharge hearing no less than twenty (20) and no more than forty (40) working days after the Superintendent receives the written election

from the certified school employee and shall give the certified school employee at least ten (10) days written notice of the date, time, and place of the discharge hearing.

- D. Each party, the Superintendent, and the certified school employee, may be accompanied by a person of his or her choice.
- E. The parties shall complete and respond to discovery by deposition and production of documents prior to the discharge hearing.
- F. The Board of Education shall have the authority to issue subpoenas for the attendance of witnesses and to produce books, records, documents, and other evidence at the request of either party and shall have the power to administer oaths.
- G. The Superintendent shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to discharge, there was just cause to discharge the certified school employee.
- H. The Superintendent shall present evidence first, with the certified school employee presenting evidence thereafter. The Board of Education shall permit either party to call, examine, and cross-examine witnesses and to introduce documentary evidence.
- I. An official record shall be made of the hearing. Either party may have one copy of the record at the expense of the Board of Education.
- J. The Board of Education shall render its written decision within twenty (20) days of the conclusion of the discharge hearing.

APPEALS

When an appeal is filed as provided in N.M. Stat. Ann. " 22-10A-24, 22-10A-25, 22-10A-27, and 22-10A-28 (2003), the Superintendent and Board of Education will follow the procedures as provided in those sections, as amended or recoded in the future...

5.6. WORKING CONDITIONS

The Superintendent of Schools will provide the working conditions for a sound educational program.

5.6.1. CONDITIONS OF EMPLOYMENT

5.6.1.1. Immigration Reform Act Requirements

All persons employed on or after November 7, 1986, will be required to prove their legal right to work in the United States as required by the United States Immigration and Control Act of 1986.

5.6.1.2. Functional Capacity Evaluation Job Placement -- Post Offer

After an offer of employment has been made, an applicant selected for a position may be required to complete a functional capacity evaluation to determine their ability to perform job-related functions and their fitness for duty. This functional capacity evaluation will be conducted by a physical therapist selected by the School District. The employment contract and commencement of work will be contingent upon the results of the evaluation. The cost for this evaluation will be assumed by the School District. This requirement shall not apply to substitutes and temporary employees or individuals employed under an increment contract.

5.6.1.3. Employee's Statement of Health

The Mountainair Public Schools requires all new employees to complete and file with the School District an "Employee's Statement of Health" to determine pre-existing impairment(s) only after an offer of employment is made. If deemed necessary, the new employee may be asked to provide a physician's release.

5.6.1.4. Background Investigations and Reference Checks

All Applicants for employment with the School District are subject to work history, education history, and reference investigations, including but not limited to substitutes and temporaries. Each such applicant will be subject to a criminal background investigation, including mandatory fingerprinting, at the candidate's expense, as a condition of further consideration for employment. The applicant must pay for the background investigation at the time of hire by cashier's check, money order or by authorizing payroll deduction.

All applicants are subject to reference checks of all past employers. As a condition of submitting an application for employment with the School District and of consideration of the application by the Superintendent of Schools, the applicant will complete a release and waiver form releasing reference information from the applicant's past employers and waiving all claims against the applicant's past employers for providing such a reference.

The release and waiver can be included in the School District's application form or in a separate document. No candidate for employment may be employed by the Superintendent unless the candidate has executed a release and waiver and a reference check of all past employers has been completed and documented.

All offers of employment are contingent upon the satisfactory completion of background investigations and reference checks. Criminal convictions shall not automatically bar an applicant from obtaining employment with the School District, but pursuant to the Criminal Offender Act, N.M. Stat. Ann. '28-2-4 and '28-2-5 (1978) (as amended or recoded in the future), 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. This also includes all bus drivers, aides, and their substitutes. In such cases, contracts shall be subject to the satisfactory completion of background checks and reference checks.

The Superintendent or his or her designee may also conduct the referenced background investigations, including reference checks of incumbent employees if the Superintendent becomes aware of facts, circumstances, or conduct that give rise to a reasonable suspicion that undisclosed aspects of the employee's background might disqualify him or her to continue in employment with the School District that were not known at the time employment was offered to the employee.

5.6.2. HEALTH REQUIREMENTS

5.6.2.1. Communicable Diseases

Any employee who is infected with any communicable disease dangerous to the public health will be excluded from all schools and gatherings of children during the prescribed period of recovery.

5.6.2.2. Medical Examination

If at any time there is a question as to the ability of a school employee to perform the essential functions of his or her job, the Superintendent will require the employee's cooperation in having the employee's healthcare provider respond to the Superintendent's inquiries as to the employee's medical condition with regard to performing the essential functions of his or her job, including but not limited to, whether the employee can return to work and whether an accommodation is required, etc. There may be additional medical information required by the Superintendent in order for him or her to make an appropriate decision regarding the employee's employment.

If the School District is unsatisfied with the responses from the employee's healthcare provider or if there is reason to question the information provided, the Superintendent may require the employee to complete physical examination by a School District appointed doctor to be paid for by the School District.

The United States Equal Employment Opportunity Commission has identified four

situations under which a medical examination or inquiry will be considered job related and consistent with business necessity and, therefore, permissible.

- A. When an employee wishes to return to work following an absence due to illness or injury. An examination or inquiry may be conducted to determine if the employee, with reasonable accommodation, can safely and effectively perform the essential functions of the job.
- B. When an employee requests an accommodation. If an employee requests an accommodation on the basis of a claimed disability, an examination or inquiry 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.
- C. When an employee is having difficulty performing the job effectively. If an employee is having difficulty performing his/her job, the School District may require the employee to cooperation with an inquiry to the employee's healthcare provider or to undergo a medical examination to determine if the performance problems are a result of an underlying medical condition.
- D. When the examination is required by federal law. Medical examinations or monitoring are required under certain circumstances by regulations issued by the Department of Transportation and the Occupational Safety and Health Administration.

The School District may conduct voluntary medical examinations as part of an employee health or "wellness" program. All information obtained through medical inquiries or examinations must be treated as confidential. Thus, medical information must be kept in a confidential employee medical file, separate from other personnel information about the employee.

5.6.2.3. Blood-borne Pathogen Training

The Mountainair Public Schools will conduct training on blood borne pathogen in the workplace and ways to reduce the risk of exposure. This training will be conducted at the time of initial hire and at least once a year thereafter. Verification of this training will be placed on file in the Human Resources Office at the time of initial employment. This is in accordance with OSHA standard 29 CFR 1910.1030.

5.6.3. TIME/WORK SCHEDULE

Employees will meet the time schedule of the workday stipulated by the supervisor of the department, school, or office where the employee is assigned. Employees will be made aware of the workday schedule by the work site supervisor.

5.6.4. ATTENDANCE AND PUNCTUALITY

It is the policy of the School District to require habits of good attendance and punctuality on the part of its employees whether they are classified as certified or non-certified. Unauthorized absences or tardiness will not be tolerated and may result in disciplinary action to include termination and discharge.

- A. Employees must be at their work stations at the starting hour and at the prescribed time after breaks and meal periods.
- B. Employees who for any reason will be delayed more than ten minutes in reporting for work shall notify their supervisors in advance. If their supervisors are unavailable, such employees shall contact the Superintendent. A failure to notify in advance the school of any anticipated absence or delay in reporting for work will result in loss of compensation during the absence and may be grounds for disciplinary action to include termination and discharge.
- C. Employees who are delayed in reporting for work more than 30 minutes and who have not notified their supervisor of their expected tardiness may lose their right to work the balance of the work day. Those employees permitted to report to work late will be paid only for the time they actually work.
- D. Absences and tardiness shall be documented as it occurs by the worksite supervisor, and employees shall be disciplined for excessive absenteeism and tardiness.
- E. Employees who are absent from work for three (3) consecutive days without giving notice of good cause to their immediate supervisor or the Superintendent of Schools shall be discharged for abandonment of their positions, subject to applicable procedural requirements.
- F. Except for scheduled lunch breaks, employees may not leave the work site during the duty day except with the permission from their immediate supervisor.

5.6.5. WORK LOAD

Employees will assume a workload and duty day commensurate with their position assignment. Employees will be required to assist at other duty stations if requested by their supervisor.

Supervisors may assign support staff assistants to perform office responsibilities as required.

Certified employees may volunteer for sponsorships or supervision duties.

5.6.6. STAFF MEETINGS

Attendance at general staff meetings called by the Superintendent is required of all employees. Principals/Directors are responsible for employee attendance at building level staff meetings.

5.6.7. EXTRA DUTY

Supervisors shall inform employees of activities before or after the duty day that they are expected to attend.

Employees desiring consideration for additional assignments in summer school will make the request in writing to the Director for Human Resources.

5.6.8. TRAVEL EXPENSES

The Board of Education will reimburse employees for expenses for travel in connection with School District business. Such travel to be approved by the Superintendent or his or her designee in advance, and reimbursement shall not exceed Board established per diem and mileage rates.

5.6.9. DUTY HOURS

The Superintendent of Schools shall establish hours during which employees are on duty as required by workload and the efficient management of personnel resources.

- A. Elementary schools, secondary schools, and administrative offices must be covered by the appropriate staff between the hours of 7 a.m. to 4:00 p.m. (5:00 p.m. for administrative office) Monday through Thursday of any work week unless an abbreviated schedule has been authorized by the Superintendent or his or her designee. The duty day schedule for employees may be adjusted by the supervisor or Superintendent to accommodate work site or School District requirements.
- B. The payroll workweek is Monday through Sunday, beginning and ending at midnight on Sunday. The workweek for employees may vary dependent upon job classification.
- C. Employees exempt from the overtime provisions of the Fair Labor Standards Act are not required to sign-in at the beginning of the duty day or sign-out at the end of the duty day; however, all employees who work at more than one site will be required to sign-in/sign-out. Employees who leave the work site during the duty day must obtain permission from their immediate supervisor and/or sign-in/sign-out except during their designated meal period.

- D. Employees not exempt from the overtime provisions of the Fair Labor Standards Act are required to sign-in at the beginning of the duty day and sign-out at the end of the duty day or are required to daily clock in and clock out on a time clock. The School District shall maintain the time records of these employees in the Superintendent.
- E. Although Licensed educators shall be on duty at school a minimum of eight and a half (8.5) hour workday, exclusive of lunch, licensed educators are, consistent with their professional status (see NMSA 1978 Section 22-10-9), expected to perform such services as may be necessary and consistent with their professional responsibilities and status in order to contribute to and promote a comprehensive educational program. Licensed educators may be called upon to perform such additional services outside the regular school duty day or outside school property where necessary to carry out individual job duties or expectations or in connection with school-sponsored programs, activities, functions or events. No additional compensation shall be payable for such professional services.

Employees assigned more than four (4) hours of daily work time shall have a minimum of thirty (30) minutes or a maximum of sixty (60) minutes unpaid meal period. An employee's meal period is determined and may be adjusted by their immediate supervisor. The meal period may not be used to shorten the workday. The workday for employees may vary dependent upon job classification. The schedule of hours for employees shall be determined by the supervisor of the work site where they are assigned. Employees shall be informed of their daily schedule by the supervisor.

- F. Attendance at seminars, lectures, meetings, and training programs are not considered as time worked if:
 - 1. The employee's attendance is outside regular working hours;
 - 2. The employee's attendance is voluntary, i.e., not required by the School District;
 - 3. The course, seminar, lecture, or meeting is not directly related to the employee's job; and
 - 4. The employee does not perform any productive work during such attendance.
- G. When a department is required to work more than one shift per day, the hours of work for each shift shall be determined by their immediate supervisor with approval of the Director for Human Resources.
- H. When it is necessary for an employee to be absent, the employee must notify their immediate supervisor or designee in advance of the probable duration of the absence.

CERTIFIED PERSONNEL

- A. Administrators, instructors, and other certified employees are classified as professionals. The U.S. Department of Labor classifies professionals as exempt employees not subject to the provisions of the Fair Labor Standards Act.
- B. When circumstances require a delayed start or an "abbreviated day" is declared by the Board or Superintendent, certified employees shall report for work thirty (30) minutes before the scheduled student starting time.

CLASSIFIED PERSONNEL

- A. Custodians and maintenance personnel, work a nine and a half (9.5) hour day, Thirty-eight (38) hour week. Instructional, health, and library assistants work an eight (8) hour day, thirty-two (32) hour work week. Secretaries work an eight and a half (8.5) hour day, thirty-four (34) hour work week. Business Manager and the Executive Secretary work a nine (9) hour day, thirty-six (36) hour work week. Additional hours may be assigned as required by workload and will be compensated according to Fair Labor Standards Act.
- B. When circumstances require a delayed start or an "abbreviated day" is declared by the Board or Superintendent, classified employees will report to work to meet their established time schedules. An allowance for the late arrival of a classified employee may be made by their immediate supervisor without loss of pay.
- C. Classified employees may be required to work overtime whenever it is deemed necessary by their immediate supervisor. No employee shall be permitted to work overtime without the prior approval of their immediate supervisor and a Superintendent.
- D. Classified employees requested to work during a vacation period or holiday will be paid at their hourly rate of pay. If additional hours are in conjunction with a forty (32) hour workweek, the employee will be entitled to overtime compensation as set forth in the Fair Labor Standards Act.
- E. Classified employees may request time off not to exceed two (2) hours per week to be worked at another time that week with the approval of their immediate supervisor. Approved time off will be documented by the supervisor.

5.6.10. EMPLOYMENT AGREEMENTS/CONTRACTS

The Superintendent of Schools shall sign employment contracts for certified and non-certified personnel.

5.6.10.1. CERTIFIED

All employment contracts between the School District and certified school personnel shall be in writing and on forms approved by the New Mexico Public Education Department., unless no such approved form exists for a particular type of contract. The contracts shall contain and specify the terms of service, date, 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 Public Education Department and the Board of Education.

All employment contracts between the School District and certified school personnel shall be for a period of one (1) school year. Contracts not to exceed three (3) years are permitted for certified school administrators.

Terms and conditions of employment pertaining to the Superintendent of Schools may be modified during the duration of an existing contract upon the mutual agreement of the Board of Education and the Superintendent of Schools.

5.6.10.2. Non-Certified School Employees Who Have Not Completed Three Consecutive Years of Service

Employment agreements between the School District and non-certified school employees who have not completed three consecutive years of service shall be in writing. The employment agreement shall contain and specify the terms of service, date, salary to be paid, and the method of payment. The employment agreement shall be terminable at the will of either the non-certified school employee or the Superintendent on behalf of the School District in accordance with the terms and conditions of the employment contract.

5.6.10.3. Non-Certified School Employees Who Have Completed Three or More Consecutive Years of Service

Employment agreements between the School District and non-certified school employees who have completed three or more consecutive years of service shall be in writing on an employment contract. All employment contracts between the School District and non-certified school employees who have completed three or more consecutive years of service shall be for a period of one (1) year. The employment contract shall contain and specify the terms of service, date, salary to be paid, and the method of payment. The contract may be terminated for just cause in accordance with New Mexico School Personnel Act (as amended and recoded in the future) and the terms and conditions of the employment contract.

5.6.11. EMPLOYEE HOLIDAY WORK SCHEDULE

The total number of duty days per contract year will be outlined in the annual contract. Holidays will be as designated on the "Employee Holiday and Work Schedule."

5.7 COMPLAINTS

5.7.1. EMPLOYEE PROCEDURES

The following procedures, as well as the grievance procedure set forth under paragraph 5.45, are available to employees for resolution of problems.

5.7.2. SEXUAL HARASSMENT

The Board of Education will not tolerate sexual harassment activity by any of its employees. This Policy similarly applies to non-employee volunteers and to any other persons who work subject to the control of School District authorities.

It shall be the policy of this School District to:

- A. Prohibit and discourage any employee from sexually harassing any job applicant of the School District or any other employee of the School District;
- B. Provide a harassment-free work environment;
- C. Prohibit and discourage any employee from sexually harassing other employees, contractors or students;
- D. Stop any ongoing sexual harassment, remedy in a speedy manner any consequences of sexual harassment and prevent the reoccurrence of such conduct;
- E. Provide on-going education and awareness of the problem of sexual harassment; and
- F. Provide information to employees and students about how to pursue claims or complaints of sexual harassment.

5.7.2.1. Definitions

For the purpose of this Policy, sexual harassment includes unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.

A. Conduct of a Sexual Nature

1. Conduct of a sexual nature may include, but is not limited to, verbal or physical sexual advances, including subtle pressure for sexual activity; touching, pinching, patting, or intentionally brushing against; comments regarding physical or personality characteristics of a sexual nature; sexually-oriented "kidding," "teasing," double-entendres, and jokes, and any harassing conduct to

which an employee would not be subjected but for such employee's sex. Sexual harassment of students by teachers and other employees is prohibited and will not be tolerated.

B. Verbal or Physical Conduct of a Sexual Nature

1. Verbal, or physical conduct of a sexual nature may constitute sexual harassment when the allegedly harassed employee has indicated, by their conduct, that it is unwelcome.
2. An employee who has initially welcomed such conduct by active participation must give specific notice to the alleged harasser that such conduct is no longer welcome in order for any such subsequent conduct to be deemed unwelcome.
3. The Board of Education hereby prohibits any conduct of sexual nature by school employees directed toward students and shall presume that any such conduct is unwelcome conduct of a sexual nature.

C. Unwelcome Sexual Advances

For the purposes of this Policy, unwelcome sexual advances or requests for sexual favors, and other unwelcome conduct of a sexual nature constitute prohibited sexual harassment if:

1. Submission to the conduct is made either an explicit or implicit condition of employment; or award of favorable grades or student/employee benefits;
2. Submission to or rejection of the conduct is used as a basis for an employment decision affecting the harassed employee; or any decision or treatment affecting a student; or
3. The conduct substantially interferes with an employee's work performance, or creates an intimidating, hostile, or offensive work or school environment.

5.7.2.2. Specific Prohibitions

A. Administrators and Supervisors

1. It is sexual harassment for an administrator or supervisor to use his/her authority to solicit sexual favors or attention from subordinates when the subordinate's failure to submit will result in adverse treatment, or when the subordinate's acquiescence will result in preferential treatment; and
2. Administrators and supervisors who either engage in sexual harassment or tolerate such conduct by other employees shall be subject to discipline, including termination and discharge.

B. Non-Administrative and Non-Supervisory Employees

It is sexual harassment for a non-administrative and non-supervisory employee to subject another such employee to any unwelcome conduct of a sexual nature. Employees who engage in such conduct shall be subject to discipline, including termination and discharge.

C. Employees and Students

It is sexual harassment for an employee to subject a student to any unwelcome conduct of a sexual nature. Employees who engage in such conduct shall be subject to termination or discharge.

5.7.2.3. **Reporting, Investigation, and Sanctions**

A. It is the express policy of the School District to encourage victims of sexual harassment to come forward with such claims or complaints. This may be done through the Complaint Procedure or through the provisions of Policy 5.2.

1. Employees who feel that administrators or supervisors are conditioning promotions, increases in wages, continuation of employment, or other terms or conditions of employment upon agreement to accept unwelcome conduct of a sexual nature, are encouraged to report these conditions to a School District administrator, who is not the offending person, the Superintendent of Schools.;
2. Employees are also urged to report to a School District administrator, who is not the offending person, the Director of Human Resources and/or to the Superintendent of Schools any unwelcome conduct of a sexual nature by supervisors or fellow employees if such conduct interferes with the individual's work performance, or creates a hostile or offensive working environment;
3. Confidentiality will be maintained to the extent permitted by state law and to the extent that a full and complete investigation can be accomplished and no reprisals or retaliation will be allowed to occur as a result of the good faith reporting of charges of sexual harassment;
4. Students are urged to report any conduct of a sexual nature by school employees, teachers, or students to a school counselor, or administrator if such conduct affects the student, interferes with school performance, or creates an intimidating, hostile or offensive school environment;
5. In determining whether any alleged conduct constitutes sexual harassment, the totality of the circumstances, the nature of the conduct and the context in which the alleged conduct occurred will be properly investigated. The Superintendent

or his or her designee has the responsibility of investigating and resolving all complaints of sexual harassment.

6. Any employee found to have engaged in sexual harassment shall be subject to discipline, including, but not limited to, warning or reprimand, suspension, discharge or termination, subject to applicable procedural requirements; and
7. All employees shall follow School District procedures to implement Board policy as established by the Superintendent or designee.

5.7.3. AMERICANS WITH DISABILITIES ACT

Title II of the Americans with Disabilities Act states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination" in programs or activities sponsored by a public entity.

Pursuant to the US Department of Justice regulations implementing Title II of the Americans with Disabilities Act as amended in the future, the Mountainair Public Schools has adopted the following internal grievance procedure.

- A. Complaints are to be submitted within thirty (30) days after the complainant becomes aware of the alleged violation of the ADA.
- B. Complaints are to be submitted in writing to the ADA Coordinator: Superintendent, Mountainair Public Schools, Mountainair, New Mexico 87036, (505) 847-2333.
- C. Complaints shall set forth the name and address of the person submitting the complaint and a brief description of the alleged violation.
- D. Complaints submitted pursuant to this procedure shall be appropriately investigated by the ADA Coordinator or his or her designee. Investigations shall be conducted on an informal basis and shall afford all interested parties and their representatives an opportunity to submit evidence relevant to the complaint.
- E. A written determination of the validity of the complaint and a description of the resolution shall be issued by the ADA Coordinator. A copy of the determination and resolution shall be forwarded to the complainant within thirty (30) calendar days of the filing of the complaint.
- F. The complainant may request a reconsideration of the resolution of the complaint by submitting a written request for reconsideration to the Superintendent of Schools within thirty (30) calendar days of the issuance of the resolution by the ADA Coordinator.

- G. The rights of individuals under this procedure are in addition to other remedies provided by law, including the filing of a complaint under the ADA with the appropriate federal department of agency. The submission of a complaint pursuant to these procedures is not a prerequisite to the pursuit of any other remedies provided by law.
- H. These rules shall be construed and interpreted to protect the substantive rights of persons under the ADA and to ensure that the Mountainair Public Schools complies with its obligations under the ADA and implementing regulations.
- I. The ADA Coordinator shall maintain files and records for the School District regarding complaints submitted pursuant to this procedure.

5.7.4. REPORTING ILLEGAL OR IMPROPER CONDUCT

The Board of Education affirms its commitment to adherence to proper and legal conduct by all employees up to and including the Superintendent of the Mountainair Public Schools. As part of this commitment, the Board requires that an employee who has reliable information that another employee is engaging in illegal or improper conduct shall report such information to a School District administrator or to Members of the Board of Education. The employee making the report shall not be subject to retaliation. Any employee who submits such a report having acted in bad faith or with malicious intent shall be subject to discipline, including termination and discharge. Any employee who retaliates against another employee who makes a good faith report of illegal or improper conduct shall be subject to discipline, including termination and discharge.

It is the duty of the Superintendent of Schools or his or her designee to investigate any report of illegal or improper conduct by an employee. The employee making the report has no duty to investigate, but shall cooperate with the investigating official(s). During the investigation, the originating report and findings shall be held confidential, consistent with the requirements of an effective investigation to the extent permitted by law. Upon the conclusion of the investigation, a written determination shall be issued.

If it is determined that the report of illegal or improper conduct is unfounded or has no basis, the accused employee shall receive a written determination from the investigating official(s) indicating that no wrongdoing was found. A copy of the final determination will be maintained in a secure file in the Superintendent's Office separate from the employee's official School District personnel file. The investigating official(s) shall destroy all other written records concerning the matter if permitted by law.

If it is determined that there are grounds to support the allegation that an employee has committed illegal or improper conduct, the employee shall be subject to discipline up to and including discharge or termination. If the conduct determined to have occurred is illegal, the matter will be reported to the law enforcement agency with appropriate jurisdiction.

5.7.5. **SEXUAL HARASSMENT OF STUDENTS**

I. PURPOSE

The purpose of this Policy is to require a school environment in which students feel safe and secure. The Board of Education is committed to maintaining an environment conducive to learning in which students are safe from sexual harassment.

The Board of Education finds that the effective education of our students requires a school environment in which students feel safe and secure. Sexual harassment of students, whether by employees or by other students, impairs the proper atmosphere for education, and creates an inequitable climate for learning. In addition to its negative effect upon education, sexual harassment negatively affects the characters of young people, both the harassers and the victims of harassment.

II. POSITION

- A. It is the policy of the Board of Education to prohibit harassment of any student on the basis of sex. The Board of Education will not tolerate sexual-harassment of students by employees or by other students. Sexual harassment is illegal.
- B. No employee of the School District shall engage in any conduct of a sexual nature with any student, regardless of the student's age, ability to consent, or actual consent.
- C. Title IX of the Education Amendments of 1972 provides that schools must provide an educational program that offers equal educational benefits for boys and girls. Decisions of the United States Supreme Court and the United States Department of Education make clear that sexual harassment of student by employees or by other students are prohibited by law.
- D. Much of the conduct described in the detailed specification of this Policy, including sexually-oriented name-calling, graffiti, teasing, etc., has no place in school. However, requests for dates or other age-appropriate expressions of interest or affection are not considered sexual harassment.

III. DEFINITIONS AND STANDARDS OF CONDUCT

A. Definitions

“Conduct of a Sexual Nature” The definition of “Conduct of a Sexual Nature” may include, but is not limited to:

- 1. verbal or physical sexual advances, including subtle pressure for sexual activity;

2. repeated or persistent and unwelcome requests for dates, meetings, and other social interactions;
3. sexually oriented touching, pinching, patting, staring, pulling at clothing, or intentionally brushing against another;
4. showing or giving sexual pictures, photographs, illustrations, messages, texts messages, instant messages, e-mails or notes;
5. writing graffiti of a sexual nature on school property;
6. comments or name-calling to or about a student regarding alleged physical or personal characteristics of a sexual nature regardless of communication medium;
7. sexually-oriented “kidding,” “teasing,” double-entendres, and jokes; and
8. any harassing conduct to which a student is subjected because of or regarding the student’s sex.

B. Standards of Conduct

1. Between an employee and a student:
 - a. Sexual harassment is any conduct of a sexual nature. Between students and employees, sexual harassment is any unwelcome conduct of a sexual nature.
 - b. No employee may engage in conduct of a sexual nature with a student at any time or under any circumstances, regardless of whether such conduct takes place on school property or in connection with any school-sponsored activity.
2. Between students:
 - a. Verbal or physical conduct of a sexual nature by one student of another may constitute sexual harassment when the allegedly harassed student has indicated, by his or her conduct, that the conduct is unwelcome, or when the conduct, by its nature, is clearly unwelcome or inappropriate.
 - b. A student who has initially welcomed conduct of a sexual nature by active participation must have communicated to the alleged harasser that such conduct is no longer welcome in order for any such subsequent conduct to be deemed unwelcome.
3. Duty under the Policy:

School officials, employees and volunteers shall not permit or tolerate sexual harassment of students and shall immediately report, intervene or stop sexual harassment of students that is threatened, found or reasonably known or suspected to be occurring.

4. Other Prohibitions

- a. The Board of Education prohibits retaliation against any person for good faith reporting, or participating in the investigation of an alleged violation of this Policy.
- b. The Board of Education prohibits employees or students from knowingly giving false reports or information under this Policy.

IV. REPORTING, INVESTIGATION, AND SANCTIONS

A. Reporting:

It is the express policy of the Board of Education to encourage students who feel they have been sexually harassed by a school employee or by another student or students to report such claims. Reports of sexual harassment may be reported on the appropriate School District forms. However, written reports of sexual harassment are not required under this Policy.

1. Reporting of Sexual Harassment by a School Employee:

Any employee who witnesses or is aware of conduct which may violate this Policy shall report it to the principal or their immediate supervisor at his or her earliest opportunity. Any employee who receives any report of sexual harassment of a student, whether the report is given by a student, a parent, or another employee, or who himself or herself observes instances of sexual harassment must notify his or her immediate supervisor or the Superintendent, regardless of whether the employee receiving the report or observing the instance considers the matter credible or significant.

2. Reporting of Sexual Harassment by a Student or Students:

Any student who believes he or she has been sexually harassed by an employee, another student or other students, should report the incident to a teacher, counselor, principal or assistant principal.

If a student who believes he or she has been sexually harassed by an employee, another student or students, and who feels uncertain about who to tell, or feels uncomfortable telling any counselor or principal, the student should tell his or her parent(s) about the problem, and ask for the parent(s) help in reporting the sexual harassment to appropriate School District personnel.

If a student believes he or she has been sexually harassed by a counselor or a principal, or by any other administrator, or any school employee, the

student should seek the assistance of his or her parent(s) in reporting such harassment to the Superintendent or to a member of the Board of Education. Students may also report the incident to any school employee.

B. Investigation:

1. All reports of sexual harassment by a school employee in violation of this Policy shall be promptly investigated by the Director of Human Resources or his/her designee. Should a designee conduct the investigation, the Director's designee must be a licensed public school administrator.
2. All reports of sexual harassment by a student or students in violation of this Policy shall be promptly investigated by the school principal or his/her designee of the school receiving the report or of the school in which the conduct allegedly occurred or pertains. Should a designee conduct the investigation, the school principal's designee must be a licensed public school administrator.
3. The Superintendent of Schools shall promulgate regulations governing the investigation of complaints of violations of this Policy ensuring that all complaints of violations are properly and thoroughly investigated. The regulations shall require that the final investigation report created be sufficient to document the investigation and to support any disciplinary or other action specified or recommended in the investigation report as a result of the investigation. The regulations shall also provide specific provisions for communication with the alleged victims and their parents/guardians as to whether the complaint was substantiated and as to the progress of the investigation. With regard to investigations of students, the regulations shall provide that the investigation process must be concluded within a maximum of ten (10) school days of receipt of such complaints. The regulations shall also provide that if the investigation of a student is conducted by an administrator other than the school principal, the principal will respond to the submission of the final investigation report within three (3) school days, approving the proposed action to be taken or directing further or different action. The regulations shall also provide that requests for an extension of this time requirements must be approved in writing by the Superintendent. With regard to the investigations of employees, the regulations shall provide that the Director of Human Services will coordinate his or her investigation with the applicable law enforcement agency, if applicable, and the investigation shall be concluded in the most expeditious manner possible.
4. Parents and students to which the complaint pertains will be kept informed throughout the investigative process.
5. The Superintendent's regulations shall provide for a grievance procedure for parents and students with regard to investigations of students who are not satisfied with actions taken by or wish to appeal the initial findings of the school principal or designee. The regulations for the Policy shall

provide that the Superintendent of Schools shall be the final appeal authority on any such grievance. Parents and students shall be informed of the availability of such a grievance process.

6. With regard to investigation of students, the regulations shall provide that the Superintendent shall make a determination on a grievance within fifteen (15) school days of the submission of a grievance under the regulations approving the actions of the school principal or directing further or different action.
7. There shall be no grievance procedure under this Policy with regard to investigations of employees as all personnel decisions pertaining to employees shall remain within the sound judgment of the Superintendent of Schools.
8. The Board of Education prohibits any person from actively obstructing an investigation into an alleged violation of this Policy.
9. Where violations of criminal law may have occurred, the principal, in consultation with the Superintendent or his/her designee, shall report the matter to the appropriate law enforcement agency.

C. Standard:

In assessing the existence of a violation of this Policy by students and the appropriate discipline, the principal or designee shall consider the nature and extent of the conduct, the age of the student(s) involved, the context in which the alleged conduct occurred, and any prior history of conduct prohibited by this Policy on the part of the violator.

In assessing the existence of a violation of this Policy by employees and the appropriate discipline, the Superintendent shall consider the nature and extent of the conduct, the age of the student(s) involved, the context in which the alleged conduct occurred, and best interests of the victim and the School District.

V. CONFIDENTIALITY

The identities of those reporting violations of this Policy and those cooperating in the investigation of alleged violations shall be kept confidential to the extent consistent with the requirements of a full and fair investigation, the due process rights of persons charged with violations, and state and federal law.

VI. SANCTIONS

- A. Employees: Any employee found to have engaged in conduct that violates this Policy shall be subject to sanctions, including, but not limited to, warning or reprimand, suspension, or termination, subject to any applicable procedural requirements.

- B. Students: Any student found to have engaged in conduct that violates this Policy shall be subject to discipline, including, but not limited to, suspension or expulsion, subject to any applicable procedural requirements.

VII. PUBLICATION

This Policy shall be published in the Board's policies manual and on the School District's website. A summary of this Policy shall be published each year in all student and employee handbooks.

VIII. REVIEW

This Policy shall be reviewed on an ongoing basis in accordance with the Board of Education policy review process.

Legal Reference: 22-5-4.3 NMSA (1978) 30-20-13 NMSA (1978) 30-20-16 NMSA (1978) 30-20-18 NMSA (1978) 6.11.2.9 NMAC; Reviewed by Cuddy Jan. '08.

5.7.6 PROHIBITING VIOLENCE AND AGGRESSIVE CONDUCT BY SCHOOL EMPLOYEES

Violence or violent conduct by employees is inconsistent with the School District's mission of instilling respect, self-control, and personal discipline in our students. The effective operation of the School District requires that employees strictly avoid subjecting other employees or non-student third persons to violence, the threat of violence, or other forms of physical harassment or intimidation.

A. Violent Conduct by Employees Prohibited

1. The prohibitions and exception in this Policy apply to conduct by an employee on school premises, and while an employee is on duty at, or in connection with, a school sponsored activity.
2. The Board of Education's prohibition of employee violence toward students is set forth in its Policy on Physical Mistreatment of Students (Corporal Punishment). Instances of employee violence toward students shall be addressed according to the terms of that policy.
3. Violent conduct by employees is prohibited, including, but not limited to, the following:
 - a. Any form of physical violence, as defined herein;

- b. Intimidation, harassment, or any threat of physical violence, communicated by words or conduct;
- c. Violence toward property, as defined herein, or the threat of violence toward property, communicated by words or conduct; or
- d. Possession of a weapon on school property or while at work.

B. Definitions

1. Physical violence is any form of intentionally forceful, harmful, hurtful or patently offensive physical contact administered upon or directed to the body of another, including, but not limited to:
 - a. Striking, kicking, squeezing, or pinching any part of the body, or forcefully grabbing the body or clothing, or attempting to do any of the foregoing; or
 - b. Restraining or restricting physical movement through physical contact, or attempting to do either.
 - c. Exceptions: The following actions by an employee are excepted from this Policy, and will not constitute a violation of the Policy:
2. An employee may, but is not required to, reasonably restrain another employee or third party whose conduct is violent or physically disruptive if:
 - a. The conduct of the employee-to-be-restrained is directed toward any person, including, but not limited to, any employee, a student, any third person, or the employee himself or herself, or
 - b. The conduct of the employee-to-be-restrained is directed toward school property or the property of another on school premises.
3. In any instance in which another employer or third party has refused valid directives to proceed to, to leave, or to avoid entering any part of School District premises, and the employee's or third party's refusal creates a disruption or potential disruption of the operations of the school or School District, an employee may, but is not required to, exercise a reasonable grasp upon, or restraint of, the other employee or the third party for the purpose of moving or removing such person, or for the purpose of preventing the other employee or third party from entering the premises.

Violence toward property is intentionally damaging or destroying the property of the School District, of another employee, or of a third party, or attempting to do any of the foregoing.

C. Interpretation

1. This Policy shall be reasonably interpreted to achieve the Board of Education's goal of preventing and addressing employee violence.
2. In assessing an employee's conduct under this Policy, consideration will be given to the totality of the circumstances, including what the employee reasonably perceived, what the employee reasonably intended, and whether the employee's conduct was reasonable under the circumstances and in view of the employee's professional status.

D. Discipline

This Policy shall be enforced on the basis of zero-tolerance. An employee who is found to have violated this Policy *shall* be subject to discipline, which may include suspension or discharge for any violation.

E. Reporting

1. Violations or suspected violations of this Policy shall be reported to the Superintendent of Schools, and the Superintendent shall be responsible for reporting violations or suspected violations to School District's legal counsel for further action as may be necessary.
2. In addition, violations of this Policy by employees may be referred to law enforcement agencies, at the discretion of the Superintendent and upon consultation with School District's legal counsel.
3. Nothing in this Policy shall limit the right of any person who believes himself or herself to have been a victim of employee violence to pursue criminal charges or other legal remedies as may be available outside of this Policy.

5.7.7 USE OF PHYSICAL RESTRAINTS (adopted 4-2-17)

5.7.7.1 Rationale for Restraint Use:

1. In all situations, even those that become physically violent, it is the intent of Mountainair Public Schools to provide the best possible care, welfare, safety, and security for all involved.
2. Whenever possible, attempts will be made to prevent or defuse potentially assaultive behavior through early intervention.
3. Physical control and restraint will be used only as a last resort, after all verbal intervention efforts have been exhausted and only when the individual presents an imminent danger of serious physical harm to the student or others.

4. Physical control and restraint will be used only as a temporary measure to take control of another person until that person has regained control of his/her own behavior and is no longer a danger to self or others.
5. Physical intervention is not to be used with a punishment or restriction of freedom, nor will it be used as a means to inflict pain.

5.7.7.2 Physical Intervention Techniques:

1. When the need arises for physical control and restraint, the least restrictive techniques, requiring the least amount of force, will be used.
2. Staff members are not to use any form of physical control and restraint for which they have not been trained.

5.7.7.3 Team Intervention:

1. It is the policy of Mountainair Public Schools to use a team approach to physical crisis intervention whenever possible. Such an approach is the best means of providing for the care, welfare, safety, and security of all involved.
2. Staff members are encouraged to summon team assistance in all situations in which they believe their safety or the safety of others is threatened. Seeking such assistance does not mean that a decision has already been made to physically restrain an individual; rather, it should be seen as a protective safety measure.
3. If a physical control and restraint are necessary, the team leader will discontinue the restraint when the out-of-control individual has regained control.

5.7.7.4 Documentation and Prevention:

1. A school employee shall provide the student's parent or guardian with written or oral notice on the same day that the incident occurred, unless circumstances prevent same-day notification. If the notice is not provided on the same day of the incident, notice shall be given within twenty-four hours after the incident.
2. All staff members who are involved in an incident requiring the use of physical control and restraint will document the incident.
3. a meeting of the student's individualized education program team, behavioral intervention plan team or student assistance team within two weeks of each use of restraint or seclusion after the second use within a thirty-calendar-day period to provide recommendations for avoiding future incidents requiring the use of restraint or seclusion.

4. All incidents requiring the use of physical control and restraint will be followed by a postvention meeting for the purpose of staff debriefing.
5. All staff who are involved in physical control and restraint will attend the postvention meeting.
6. Incident reports must be completed and submitted to the building-level principal (or appointee) before the postvention meeting is held. Staff members should make copies of their own report for their own records and for use during the postvention session.

5.8. EMPLOYEE RECORDS

The Superintendent will maintain the official School District personnel file for each Employee at the Central Administration Office with proper security controls observed.

Staff members will be made aware of material placed in the file. Items such as supervisory reports will be dated, reviewed, and signed by the staff member before inclusion in the file.

5.8.1. TYPES

The personnel records of the School District will comply with all state and federal regulatory agencies. The records will include, but not be limited to:

1. Original application and references;
2. A complete transcript of college credit;
3. A current health certificate;
4. Current New Mexico licenses;
5. Retirement record;
6. Service record;
7. A current contract;
8. Annual evaluation records; and
9. Supervising reports and conference notations.

5.8.2. PUBLIC USE

Employee personnel records of the School District are not classified as public records and are not open to public inspection. The use of the personnel file will be limited to the employee and his designated representative, the Superintendent or his designated representative, the supervisory principal, and the Board of Education. Individual use of the file by any of the above will be through the Office of the Superintendent or Director for Human Resources.

5.8.3. DISPOSITION

Personnel records will not be destroyed. Components of the record may be destroyed upon mutual agreement of the Employee, the Principal or immediate supervisor, the Director for Human Resources, and the Superintendent and with consultation with the School District's legal counsel. Inactive records will be kept on file either in original form or in electronic format. Transcripts, military records, and TB certificates can be returned to the Employee upon termination of employment with a written request.

5.8.4. INSPECTION OF PUBLIC RECORDS

Every citizen of this state has a right to inspect any public records of this state except:

1. Records pertaining to physical or mental examinations and medical treatment of persons confined to any institutions;
2. Letters of reference concerning employment, licensing or permits;
3. Letters or memorandums which are matters of opinion in personnel files or students' cumulative files; and
4. As otherwise provided by law. (NMSA 14-2-1)

All requests to inspect public records must be in writing by the person requesting access.

5.9. SALARY

5.9.1. SALARY SCHEDULES

The Superintendent, with the assistance of staff, will prepare salary schedules, on an annual basis, containing both horizontal and vertical steps, for the review and approval of the Board or

Education. Salary schedules will form the basis for determining the annual salary of employees and will not extend beyond the school year for which they are adopted.

The School District has developed several salary schedules which are utilized for salary placement for various classifications of personnel.

5.9.1.1. Administrative Salary Schedule

Placement will be made based on job classification and experience factor assigned by the Superintendent. (Please refer to current salary schedule.)

5.9.1.2. Certified School Instructor and Certified Instructional Support Provider Salary Schedules

Teachers, counselors, nurses, diagnosticians, speech therapists, psychologists, audiologists, social workers, educational assistants and non-degreed vocational personnel or other ancillary personnel with less than a four-year degree are required to be licensed by the New Mexico Public Education Department. Placement on the Certified School Instructor or one of the Instructional Support Provider Salary Schedules will be made on the basis of the position held, degree (applicable to positions requiring a minimum of a four-year degree), credentials, and experience. All full time experience (including out-of-district experience) will be credited up to the maximum number of years allowed and specified on each salary schedule. Experience for at least ninety (90) consecutive days in a school year will count as a full year of experience. No more than one year's experience will be permitted during any given twelve-month period. (Please refer to the current salary schedule.)

Effective July 1, 1994, credit for military service, to the nearest year, will be given on the Certified School Instructor Salary Schedule if the teacher taught or had completed teacher training immediately prior to military service and if the military experience was directly related to instruction, not to exceed seven years on the salary schedule.

Undergraduate and graduate credit hours completed after receipt of B.A. or M.A. degree will be credited on the salary schedules following such credit. Credit will not be given for correspondence courses. In accordance with New Mexico Public Education Department regulations, in-service hours earned after July 1, 1988 will be disallowed for salary schedule purposes. Quarter hours will be converted to semester hours. October 1 is the deadline for verifying completion of coursework for salary payment via an official transcript sent from the college or university directly to the Superintendent.

5.9.1.3. Custodial/Central Receiving/Maintenance, Classified Office Personnel, Student Nutrition Salary Schedules

Placement is determined by applicable experience, job classification and/or administrative evaluation. (Please refer to current salary schedule.)

5.9.1.4. Substitute and Temporary Salary Schedule

Payment of substitutes and temporaries will be based upon the established hourly/daily rate. (Please refer to current salary schedule.)

Other salary schedules will be developed as required.

5.9.1.5. Increment Salary Schedule

The Increment Salary Schedule will be reviewed every two years and adjusted based upon available budgetary funds.

Employee increments are paid for additional duties and responsibilities performed before or after the duty day separate and apart from primary position responsibilities. If vacant increment positions are not filled with certified employees, the supervisor may offer an increment position to a classified employee. Increments are assigned by the supervisor with the approval of the Superintendent. Continued re-appointment to an increment assignment will be determined by the supervisor and Superintendent on an annual basis. An employee who accepts an increment assignment shall comply with all District requirements.

An employee receiving an increment will be issued a Salary Increment Memorandum noting the duty assignment and the compensation to be paid. Certified employees who perform increment responsibilities will be compensated at the rate indicated on the annual Increment Salary Schedule. The compensation received will be pro-rated based upon the actual performance of responsibilities. Classified employees who perform increment responsibilities will be compensated based upon the Fair Labor Standards Act.

5.9.2. SALARY INCREASES

A step increase for experience may be granted based upon the requirements specified on District Salary Schedules for each job classification.

The School District may, withhold an annual salary step or pay increase due to legislative action or for other budgetary restraints.

5.9.3. PAYMENT OF SALARIES

All school personnel shall be paid according to the provisions of the School Payroll Calendar covering the fiscal year.

5.9.4. MANDATORY WITHHOLDING/REDUCTIONS TO SALARIES

Salaries are subject to deduction for federal and state income tax, educational retirement, Health Care Retiree Act, Social Security, and New Mexico Workman's Compensation Annual Fee.

5.9.5. VOLUNTARY WITHHOLDINGS/REDUCTIONS TO SALARIES

Employees may authorize District approved voluntary deductions from their regular pay.

5.9.6. OVERTIME

Professional employees of the School District including administrative and certified employees are exempt from overtime provisions of the Fair Labor Standards Act.

Employees may be required to work overtime whenever it is deemed necessary by their supervisor. An employee shall not work overtime without the prior approval of their immediate supervisor and the Superintendent.

For the purposes of overtime compensation, only actual hours worked in excess of forty (40) hours during a workweek will be counted. When determining overtime, an employee's absences during the workweek will be deducted from actual hours worked. The Fair Labor Standards Act (FLSA) does not limit the number of hours that an employee may work, either daily or weekly. The Fair Labor Standards Act simply requires that overtime be compensated at a rate of not less than one and one-half times the employees' hourly rate of pay. Overtime salary will be determined under the provisions of the FLSA and U.S. Department of Labor regulations associated with the FLSA (as amended).

5.10. EMPLOYEE POSITION DESCRIPTIONS

Each Employee of the School District shall have a position description defining the duties, responsibilities, physical requirements, and qualifications of the position. Additional duties may be required in the performance of all jobs as assigned by the Superintendent of Schools.

5.11. RECRUITMENT

The Board of Education within the limitations of its budget and the approved salary schedule is committed to the policy of acquiring and keeping the best-qualified personnel.

The Superintendent shall institute procedures to obtain sufficient qualified candidates for any existing or anticipated vacancies.

5.12. HIRING

The Superintendent of Schools shall employ, assign, terminate, or discharge all employees of the School District. The Superintendent may not employ any applicant whose job assignment would cause the employee to be under direct or indirect supervision of a mother, father, husband, wife, sister, brother, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

The Superintendent of School shall not initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter or daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the Board of Education or the Superintendent. The Board of Education may waive this nepotism rule for family members of the Superintendent through formal action of the Board. (Rev. 6/19/2012)

5.12.1 Interview Committees

No board member, administrator, staff member, parent, or community member, shall serve on any interview committee for any position in the Mountainair School system in which they have a family member as one of the applicants. This shall include: father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, sister, brother-in-law, sister-in-law, grandchild, or spouse of a grandchild. (Board Approved May 10, 2011)

5.13. ASSIGNMENT OF PERSONNEL

Assignment is defined as placement of an employee in a work site position. Position assignment of new employees will be made by the Superintendent of Schools or the Director for Human Resources as delegated by the Superintendent after consultation with the immediate supervisor. An employee shall not be assigned to any work site which would cause the employee to be under the direct or indirect supervision of a mother, father, husband, wife, sister, brother, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law who is an administrator/supervisor. Personnel assignments made prior to the 1995-96 school year will be grandfathered.

Work site assignments will be made by the supervisor. It is the policy of the School District to ensure equivalence/comparability among schools in the assignment of personnel. All assignments will comply with the requirements of Title IX of the Education Amendments of 1972 and shall be free from gender discrimination.

Work site assignments/schedules of shared personnel assigned to multiple work sites may be adjusted at any time.

If an assignment change is necessary within the work site during the summer months, the supervisor will attempt to notify the employee. If the supervisor is unable to reach the employee, notification of the change in assignment will be mailed to the employee's last known address.

A classroom teacher assigned to another grade/subject area or classroom at the work site after the beginning of the school year will be granted up to two (2) days of professional leave as determined by the supervisor to prepare for the new assignment.

Employees who marry are subject to Administrative Transfer if the marriage would cause one employee to be directly or indirectly supervised by the other employee. Employees are required to notify their supervisor and the Director for Human Resources when this circumstance occurs.

5.14. ORIENTATION

Employees new to the School District will participate in an orientation session for new employees scheduled annually.

5.15. SUPERVISION

The Superintendent will be responsible for designing and implementing an effective personnel supervision program, such program to have as its basic interest the improvement of the professional staff. An administrator/supervisor shall not supervise or provide evaluation input for another employee who is a relative within the following relationships: mother, father, husband, wife, sister, brother, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law. Employees who marry are subject to Administrative Transfer if their job assignment would cause the employee to be under direct or indirect supervision of a mother, father, husband, wife, sister, brother, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law. Employees are required to notify their supervisor and the Director for Human Resources when this circumstance occurs.

5.16. EVALUATION OF PROFESSIONAL STAFF MEMBERS

The Board believes the procedures by which professional employees are supervised and evaluated must provide the employee and the supervisor the opportunity to identify both strengths

and weaknesses and to work cooperatively toward satisfactory work performance. Each certified school instructor shall devise a professional development plan for the coming year which shall be a part of the evaluation process.

The Superintendent shall develop and implement a systematic plan for the evaluation of all licensed professional employees. The plan shall be consistent with all state statutory and regulatory requirements.

Classroom or site visitations shall be made to document the employee demonstration of the standards and competencies set forth by the State, the Secretary of Public Education and the Board. A written report of the evaluation will be prepared, reviewed with the employee and filed in the employee's personnel record. No evaluation report shall be placed in an employee's record without review and discussion between the employee and the employee's supervisor. An employee in disagreement with the contents of the evaluation report may submit a written rebuttal to be attached to the report and kept on file. Evaluation is the responsibility of administration and is not subject to the complaint procedure.

LEGAL REF: 22-10A-19 NMSA (1978); 22-10A-21 NMSA (1978); 22-10A-22 NMSA (1978); 22-10A-23 NMSA (1978); 22-10A-24 NMSA (1978); 22-10A-25 NMSA (1978); 22-10A-26 NMSA (1978); 22-10A-27 NMSA (1978); 22-10A-28 NMSA (1978); 22-10A-29 NMSA (1978); 22-10A-30 NMSA (1978); 6.69.3.8 NMAC *et seq.*; 6.69.2.8 NMAC; 6.67.2.8 NMAC

5.16.1. EVALUATION CRITERIA B LICENSED, NON-CERTIFIED AND CLASSIFIED EMPLOYEES

The Board believes the procedures by which licensed, non-certified and classified employees are supervised and evaluated must provide the employee and the supervisor the opportunity to identify both strengths and weaknesses and to work cooperatively toward satisfactory work performance.

Evaluations shall reflect the Employee's work performance in his assignment based upon job description, performance criteria, competence, and effectiveness.

A written report of the evaluation will be prepared, reviewed with the employee and filed in the employee's personnel record. No evaluation report shall be placed in an employee's record without review and discussion between the employee and the employee's supervisor. An employee in disagreement with the contents of the evaluation report may submit a written rebuttal to be attached to the report and kept on file. Evaluation is the responsibility of administration and is not subject to the complaint procedure.

5.16.2. FREQUENCY OF EVALUATION

Written evaluations shall be conducted as follows:

- A. Certified employees shall be evaluated [**bi-annually in October and in March of each school year**] annually as specified in the School District's Evaluation Plan models, by law and/or required by the New Mexico Public Education Department Regulations.
- B. Non-certified employees shall be evaluated [**bi-annually in October and in March of each school year**] annually as outlined in the District's schedule for the evaluation of non-certified employees.
- C. Employees whose work performance is considered unsatisfactory shall be evaluated as required in order to afford an opportunity to improve.
- D. Employees whose work performance is considered unsatisfactory shall be placed on a Performance Improvement Plan (PIP) to address the areas of unsatisfactory work performance and shall be provided with resources and assistance to address the deficient performance areas and shall be provided with a reasonable time period to improve his or her work performance.

5.16.3 EVALUATORS

Evaluations shall be conducted by the administrator, principal, appropriate supervisory personnel or technical assistant. Evaluation input may also be provided for the evaluation by certified chairpersons, coordinators, directors or associate superintendents, if applicable.

5.16.4. STAFF EVALUATION OF ADMINISTRATORS

Annual evaluation by staff will be one component of the administrator evaluation process. The administrator will seek input throughout the year from staff members including non-certified personnel. The administrator will annually request formal evaluation input from certified staff under the supervision of the administrator or certified staff who work with the administrator. Certified staff members will complete a School District Evaluation form which focuses upon performance competencies for the administrator. The Superintendent will determine the percentage of the certified staff who will receive a School District Evaluation form to complete.

5.16.5. BOARD EVALUATION OF SUPERINTENDENT

The Board of Education will annually review the Superintendent's performance in accordance with Board approved forms and procedures. **The Superintendent evaluation will be conducted in December.**

5.17. PROMOTION

The School District shall encourage personal growth by following the policy of allowing staff members to receive first consideration for job assignment change. Personnel will be notified of existing vacancies.

Promotion shall be contingent upon the applicant having met all requirements for proper certification.

Requests shall be made in writing to the Director for Human Resources.

The Superintendent of Schools shall select the best-qualified applicant without regard to **race, age, religion, color, national origin, ancestry, sex or gender, pregnancy, sexual orientation, gender identity, physical or mental handicap, serious medical condition, disability, spousal affiliation, military status in employment or the provision of services.**

5.18. SUSPENSION

An Employee may be suspended from duty with pay pending the outcome of a hearing or the investigation of alleged charges. Suspensions are made by the Superintendent until such time disposition of the case is recommended. The suspension of personnel is the responsibility of the administration. The Superintendent of Schools shall report to the Board of Education each month the number of School District employees on administrative leave with pay. The discussion of the reasons for each employee on administrative leave with pay shall only be discussed in executive session with proper notice of such discussions under the New Mexico Open Meetings Act.

5.19. TRANSFER

Transfer is defined as reassignment of an employee from one work site to another work site. The Superintendent reserves the right to transfer an employee based upon the needs of the School District. The Superintendent or his or her designee is responsible for the transfer of personnel.

5.19.1. CRITERIA FOR TRANSFERS

In all instances, reassignment shall be effected in the best interest of the School District.

A request for transfer will not be considered if the employee has a Performance Improvement Plan (PIP) in effect. Certified Instructors teaching on an internship license will be required to fulfill the requirements for obtaining a standard license in the area for which they were initially employed prior to being eligible for another position.

The transfer of an employee will take into account the following factors including but not limited to:

1. Federal or state requirements;
2. Reduction of staff due to declining enrollment;
3. Certification/endorsements;
4. Experience and instructional skills necessary for maintenance of educational programs
5. Dissolution of instructional programs;
6. Employee's personal needs;
7. Best interests of students; and
8. Equivalence/comparability issues.

Effective April 1, 1996, employees will not be transferred to the same elementary school, secondary school department, or District department which would cause them to be placed under the direct or indirect supervision of a mother, father, husband, wife, sister, brother, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law who is an administrator/supervisor. Employees who marry are subject to Administrative Transfer if the marriage would cause one employee to be directly or indirectly supervised by the other employee. Employees are required to notify their Supervisor and the Director for Human Resources when this circumstance occurs.

VOLUNTARY TRANSFERS CERTIFIED EMPLOYEES

1. Employee transfers are allowed at the end of each semester. An employee may submit a "Request for Transfer" for a specific vacancy which occurs during the school year if the position provides for salary improvement or promotion. Transfers will be restricted at other times during the school year to preserve continuity of instructional programs and support services.
2. The Superintendent will identify School District vacancies and post "Notices of Vacancy" on a central posting board in the Administration Office. "Notices of Vacancy" will be sent to work sites for posting during the school year. "Notices of Vacancy" published after the last day of school shall be available for review in the Superintendent.
3. School District "Request for Transfer" forms shall be available at all work site offices and from the Superintendent.

4. An employee desiring a transfer shall complete all information required on the "Request for Transfer" form, sign the request, obtain the signature of the supervisor, and submit the form to the Superintendent.
5. The Superintendent will send written notification to the employee that the "Request for Transfer" has been received.
6. The employee may withdraw their "Request for Transfer" at any time by submitting a written request to the Superintendent.
7. Employees who wish to be considered for transfer to vacant positions for the new school year shall submit a "Request for Transfer" form to the Superintendent by May 31. The deadline for submitting a transfer form for a position which becomes available during the summer months is July 15.
8. School District Transfer Logs will be compiled listing employees who wish to be considered for transfer. The logs will be maintained by the Superintendent and distributed to supervisors.
9. An employee's "Request for Transfer" does not ensure placement in a vacant position. Selection is based upon the qualifications of the applicant and the needs of the School District.
10. An employee with a transfer form on file who meets all qualifications for a vacant position will be interviewed before outside applicants are considered if available at the time interviews are scheduled. The employee's opportunity for first consideration will be forfeited if the employee needs to change the interview time on the day(s) interviews are scheduled.
11. An employee's "Request for Transfer" will become void for the remainder of the school year if the employee decides not to interview for a vacant position.
12. If a vacant position is filled by an employee of the School District during the school year, the position left vacant will be filled from the outside applicant pool.

VOLUNTARY TRANSFERS CLASSIFIED EMPLOYEES

1. Employee transfers will be restricted after the 40th day during the school year to preserve the continuity of instructional programs and support services except at the end of each semester or when a specific vacancy is advertised during the school year which provides for salary improvement or promotion. If a vacant position is filled by an employee of the School District after the 40th day during the school year, the position left vacant will be filled from the outside applicant pool.

2. The Superintendent will identify School District vacancies and post "Notices of Vacancy" on a central posting board in the Superintendent. "Notices of Vacancy" will be sent to work sites for posting during the school year. "Notices of Vacancy" published after the last day of school shall be available for review in the Administration Office.
3. School District "Request for Transfer" forms shall be available at all work site offices and from the Administration Office.
4. An employee desiring a transfer shall complete all information required on the "Request for Transfer" form, sign the request, obtain the signature of the supervisor, and submit the form to the Administration Office.
5. The Superintendent will send written notification to the employee that the "Request for Transfer" has been received.
6. The employee may withdraw their "Request for Transfer" at any time by submitting a written request to the Superintendent.
7. Employees who wish to be considered for transfer to vacant positions for the new school year shall submit a "Request for Transfer" form to the Superintendent by May 31. The deadline for submitting a transfer form for a position which becomes available during the summer months is July 15.
8. School District Transfer Logs will be compiled listing employees who wish to be considered for transfer. The logs will be maintained by the Superintendent and distributed to supervisors.
9. An employee's "Request for Transfer" does not ensure placement in a vacant position. Selection is based upon the qualifications of the applicant and the needs of the School District.
10. An employee with a transfer form on file who meets all qualifications for a vacant position will be interviewed before outside applicants are considered if available at the time interviews are scheduled. The employee's opportunity for first consideration will be forfeited if the employee needs to change the interview time on the day(s) interviews are scheduled.
11. An employee's "Request for Transfer" will become void for the remainder of the school year if the employee decides not to interview for a vacant position.
12. Employees who wish to be considered for another job classification must meet all qualifications required for the position, complete all testing requirements, and provide all documentation requested by the Superintendent.

5.19.2 TRANSFER SELECTION

If an employee with a transfer request on file is selected by the Superintendent of his or her designee for a vacant position, the employee will be sent written notification of their selection and effective date of transfer. The employee will be required to indicate their acceptance of the position offered by signing the notification form and returning a copy to the Superintendent.

ADMINISTRATIVE TRANSFER CERTIFIED EMPLOYEES

1. If an administrative transfer is necessary within a specific department or grade level/subject area, the supervisor together with the Superintendent will:
 - a. Request volunteers for reassignment from the specific grade level(s)/subject area(s) or department(s) affected; and
 - b. Consider seniority; however, the needs of the District will be the final determining factor.
2. If an administrative transfer appears necessary at the end of the school year for the upcoming school year, the employee(s) will be given the opportunity to indicate in writing the grade level, subject area, and work site(s) in order of preference to be considered for transfer within the same job classification.
3. Certified employees who are transferred will be notified in writing by the Superintendent. This notification will include the effective date of transfer and the reason for transfer, limited to the factors stated under "Criteria for Transfer."
4. A classroom teacher transferred to a new work site after the beginning of the school year may be provided up to two (2) days of professional leave as determined by the supervisor to prepare for the new assignment.
5. Employees who marry are subject to Administrative Transfer if the marriage would cause one employee to be directly or indirectly supervised by the other employee.

ADMINISTRATIVE TRANSFER CLASSIFIED EMPLOYEES

1. Classified employees who are transferred will be notified in writing by the Superintendent. This notification will include the effective date of transfer and the reason for transfer, limited to the factors stated under "Criteria for Transfer."
2. Employees who marry are subject to Administrative Transfer if the marriage would cause one employee to be directly or indirectly supervised by the other employee.

5.20. RESIGNATION

5.20.1. CERTIFIED EMPLOYEES

A certified employee will give the Superintendent a thirty (30) calendar day written notice of intention to resign by submitting the written notice to the immediate supervisor. The immediate supervisor is required to forward to the Director for Human Resources the written notice of intention to resign within a 24-hour period. Failure to give thirty (30) calendar days shall entitle the Superintendent, at his or her discretion, to file a written complaint with the New Mexico Public Education Department requesting suspension or revocation of the instructor's license.

The Superintendent must approve any resignation requested which does not give the thirty (30) day notice prescribed by law.

5.20.2. NON-CERTIFIED EMPLOYEES

A non-certified Employee will give the Superintendent ten (10) work days written notice of intent to resign by submitting the written notice to the immediate supervisor. The immediate supervisor is required to forward to the Superintendent the written notice of intention to resign within a 24-hour period.

5.20.3. NOTICE

Notice of resignation in writing is deemed given when personally delivered, or the date of mailing by certified mail to the School District at Mountainair Public Schools, P.O. Box 456, Mountainair, NM 87036. A written and/or email notice of resignation shall be addressed to the Superintendent of Schools.

Any Employee who has been re-employed to a position for the following school year should notify the Superintendent immediately of the intention to decline the offer of employment.

5.21. RETIREMENT

The 1957 Educational Retirement Act provides that employees covered under its tenets make contributions to the fund as required by law on a monthly basis, and that the Board of Education contribute to the Employee's account as required by law. In the event of termination prior to retirement, the Employee may withdraw his contributions to the fund upon request. Benefits are determined by state statutes and regulations promulgated by the New Mexico Educational Retirement Board.

5.22. SEVERANCE PAY

It is the policy of the Mountainair Public School District to not grant severance pay to employees who resign, are discharged or are terminated.

5.23. SUBSTITUTES

Parental Notification: A local superintendent or governing body of a charter school shall give written notice to parents of those students who are being taught for longer than four consecutive weeks by a substitute teacher or by a person who is not qualified to teach the grade or subject.

5.23.1. QUALIFICATION FOR SUBSTITUTE TEACHERS

Substitute teachers must obtain initial substitute-teacher licensure through the Licensure Unit at the Public Education Department (PED) at their own expense. All applicants for licensure must be eighteen (18) years of age to perform services in grades K-8 and twenty-one (21) years of age to perform services in grades 9-12. Substitute teachers must have earned a high school diploma or high school equivalency and hold a valid New Mexico Substitute Teacher license issued by PED. An original license must be presented to the Superintendent and a copy will be made for placement into the personnel file. All substitutes must also complete an application form with identified references, complete a criminal background investigation including mandatory fingerprinting at the expense of the substitute and meet all other requirements established by the Superintendent and the Public Education Department.

Local school districts and state institutions that utilize substitute teachers shall each develop and promulgate substitute teacher advancement policies for level II certification that requires substitutes at a minimum:

1. To complete with a passing grade three (3) semester hours of credit from a regionally accredited college or university in areas related to the school's long range plan, student standards, or the substitute teacher's classroom assignment; or
2. To complete forty-eight (48) contract hours in professional development activities approved by the local school district, state educational institutions, or nonpublic schools in areas related to the school's long range plan, student standards, or the substitute teacher's classroom assignment; or
3. To obtain written verification from the superintendent of a local district, or from the governing authority of the state institution or nonpublic school where that substitute is employed that he/she has satisfactorily completed at least 270 hours of providing instructional services.

5.23.2. ARRANGEMENT FOR SUBSTITUTES

A substitute, if required, shall be secured by the substitute notification system. When it is necessary for an employee to be absent, the employee must notify the supervisor or designee in advance (when reasonable) of the probable duration of absence. Employees will provide notification to the substitute notification system. An absentee report maintained by the supervisor shall account for all absences of all employees and shall list all substitutes acquired.

5.23.3. DUTIES OF THE SUBSTITUTE TEACHER

The substitute teacher shall fulfill the contractual obligation of the regular teacher and shall follow the procedures and guidelines outlined in the Mountainair Public Schools "Substitute Handbook."

5.23.4. OBLIGATION TO THE SUBSTITUTE

The Employee shall provide, except in emergency, lesson plans and other instructional and classroom management information for substitute teachers.

5.24. LEAVES AND ABSENCES

When it is necessary for an employee to be absent, the employee must notify the supervisor or designee in advance (when reasonable) of the probable duration of absence. Employees will provide notification to the substitute notification system.

A. Leave Requests during the Duty Day

1. In all instances, the employee must receive prior approval from their supervisor for leave taken during the duty day.
2. Employees who need to schedule medical, professional, or personal appointments Monday through Friday of any given workday are asked to schedule those appointments outside their normal duty hours to avoid being charged for leave.
3. Employees who must schedule appointments during the duty day will be charged for their absence in the appropriate leave category in authorized increments of time (e.g., 1/4 day; 1/2 day; 3/4 day; or full day) in accordance with the following guidelines:

8-Hour Employees
2 Hours

Leave to be Charged
1/4 Day

4 Hours
6 Hours
8 Hours

1/2 Day
3/4 Day
Full Day

B. Parent-Teacher Conferences

1. Employees who attend annual parent-teacher conferences during the designated days specified on the District School Calendar will not be charged leave if their absence does not exceed one (1) hour.

C. Emergencies

1. If an emergency occurs while the employee is on duty, the employee must notify the supervisor of the circumstances and receive prior approval before leaving the work site. An emergency is defined as a condition or unexpected happening demanding immediate action that is sudden, unforeseen, and urgent.
2. The supervisor may allow the employee to leave the work site for a period not to exceed one (1) hour if the duty station can be covered voluntarily by another employee. The decision to allow the employee to leave the work site will be determined by the supervisor on a case-by-case basis.
3. If the time away from the work site does not exceed one (1) hour, leave will not be charged to the employee. If the employee's time away from the work site exceeds one (1) hour, or the supervisor must arrange for a substitute for the employee, leave will be charged at a minimum of one-half day for 7-hour employees, or one quarter day (2 hours for 8-hour employees) in the appropriate leave category.

5.24.1. SICK LEAVE

Sick leave shall be defined as leave taken for personal illness of the employee; serious illness in the immediate family; or death in the immediate family. (The immediate family is defined as the employee and spouse, their children, brothers, sisters, parents, and grandparents.) Use of sick leave is limited to twelve (12) weeks of leave without pay as outlined in the Family and Medical Leave Act policy when leave is taken for a serious illness of brothers, sisters, parents and grandparents related to the employee and spouse.

Employees contracted to work twenty (20) hours or more per week will earn sick leave at the rate of seventy-eight hundredths (.78) sick leave days per contract month (7 days for 9 month employees), to be granted at the beginning of each contract year, cumulative with a 90 day limit.

An employee who exhausts their sick leave, will have their leave deducted from their salary at their daily salary rate. The deduction will be made during the pay period that the absence occurred, unless the deduction would cause financial hardship. Then an agreement would be made

with the Business Manager to have deductions made across the agreed upon subsequent pay periods.

An employee who is diagnosed as having a communicable disease, illness, or condition which poses a potential danger to students or others shall report the condition to their supervisor. The employee may be placed on enforced sick leave by the Superintendent or designee based upon the circumstances. Enforced sick leave will be charged to the Employee's accrued sick leave.

An employee with three (3) consecutive days of sick leave must furnish a medical doctor's excuse to the supervisor. Once sick leave is declared by an employee, the employee cannot change their leave status to avoid providing a medical doctor's excuse. Employees out on long-term sick leave beyond three (3) days must communicate with their supervisor on a weekly basis and must provide medical documentation to support the leave, if requested by the supervisor.

Immediate supervisors will oversee absences to determine if a pattern of absences or a frequency of absences is occurring. If an immediate supervisor identifies a pattern of abuse, he/she shall consult with the employee. If the pattern or frequency of absences continues, the immediate supervisor will request a written statement from a licensed physician stating the reason for the absence.

An employee utilizing more than thirty (30) consecutive work days for illness must submit to an independent medical examination by a physician selected by and paid for by the District if requested to do so by the Superintendent or designee. If the physicians' reports are conflicting, the Superintendent or designee will request a medical examination to be conducted by another physician and paid for by the District.

No employee shall be paid out for unused sick leave at the time of his or her retirement or resignation.

5.24.2. SICK LEAVE BANK

The intent of the Sick Leave Bank is to provide an employee additional sick leave when a prolonged and catastrophic illness or injury (excluding normal pregnancy) is incurred by the employee or a member of the employee's immediate family that requires hospitalization or home confinement and for which no other compensation will be received.

An employee may join the Sick Leave Bank through an initial, one-time contribution of one (1) sick leave days, no later than October 1 annually. Participation in the Sick Leave Bank is strictly voluntary.

All accrued sick leave, matching sick leave, personal leave and annual leave must be used before an employee is eligible to receive days from the Bank. Employee leave history will be reviewed as part of the application process.

New employees will be eligible to request days from the Sick Leave Bank after contributing the mandatory days and upon completion of 20 contractual days.

A committee of School District employees will regulate the Sick Leave Bank. The Sick Leave Bank Committee shall be composed of three (3) to five (5) School District employees. The District Nurse will serve on the Committee as the medical advisor. The Sick Leave Bank Committee will review all requests for days and will return a decision within five (5) days of the Request Review. The Sick Leave Bank Committee must have a minimum of five (3) Committee members to review each Request Review.

A request for using days from the Sick Leave Bank must be submitted to the Sick Leave Bank Committee on a Sick Leave Bank Request form.

A maximum of sixteen (16) days may be granted per request; however, subsequent requests may be made for additional days. In total, no more than forty-eight (48) days will be granted for any single illness or injury. Additionally, no more than forty-eight (48) days will be granted in any fiscal year.

Should the number of days in the bank at the end of any school year be fewer than ninety (90), in order to maintain eligibility, each member will be required to donate one (1) day of accrued sick leave for the following school year. Contributed days are not refundable. The contributions will be made by the employee completing the "Contribution to Sick Leave Bank Form." Part-time staff shall be eligible for benefits on a prorated basis.

The employee bears the responsibility for completing sick leave requests in a timely manner. Sick leave requests will not be reviewed until all necessary paperwork has been completed and submitted. Sick leave, if approved, will only cover days missed subsequent to review from the committee. Sick leave bank days will not be awarded retroactively.

The Sick Leave Bank Committee will consider requests for the necessary days to fulfill mandatory waiting periods for worker's compensation and disability insurance if the employee is eligible for these benefits.

An employee who is not satisfied with the decision of the School District Sick Leave Bank Committee shall have the right to appeal the decision in writing by providing the District Sick Leave Bank Committee additional information concerning facts that would change the original decision.

5.24.3 FAMILY AND MEDICAL LEAVE OF ABSENCE

This Policy is adopted to implement the federal Family and Medical Leave Act of 1993 (FMLA) pursuant to the terms, conditions, and limitations of the Act and as amended in future. In the event of any conflict between the provisions of this or any other leave policy of the Board of Education and the provisions of the FMLA, the latter shall prevail.

- A. To be eligible for leave under the Act, an employee must have worked for the School District for a total of twelve (12) months, and the employee must have worked a total of 1,250 hours in the previous twelve (12) months.
- B. Pursuant to the Family and Medical Leave Act, employees are permitted up to twelve (12) weeks of unpaid leave per year during any twelve 12-month period. Family and medical leave can be requested for the following reasons:
 - 1. Childbirth and infant care;
 - 2. 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 twelve (12) months after the birth or placement of the child. Adoption leave covers only children under the age of eighteen (18) unless the child is incapable of self-care in three (3) or more activities of daily living because of a mental or physical handicap;
 - 3. Care of the employee's spouse, son or daughter or parent with a serious health condition; and
 - 4. The inability of the employee to perform their job duties due to their own serious health condition, or the necessary absence from work of an employee to receive medically necessary treatment.

The twelve (12)-month period within which each employee may take twelve (12) weeks of leave under the FMLA shall be a "rolling" twelve (12)-month period, measured backward for each employee from the first time each such employee uses leave under the FMLA.

- C. 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 of 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.
- D. An employee requesting leave shall submit a "Request for Leave" form to the Director for Human Resources.
- E. If an employee requests 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.
- F. 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 School District with at least 30 days advance notice of the leave. If thirty (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 thirty (30) days notice of leave is provided, the employee must schedule an appointment with the Director for Human Resources for approval.

- G. 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:
1. The date the condition began;
 2. It's probable duration;
 3. Appropriate medical facts; and
 4. That, for a specified time, either.
 5. The employee is unable to perform his or her job functions or will be unavailable to do so while receiving necessary medical treatment, or
 6. 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.

- H. Spouses employed by the School District are limited to a combined total of twelve (12) workweeks per year for the birth or placement of a child, or to care for a parent. 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.
- I. Intermittent leave and reduced work schedules are allowed when such are medically necessary; however, employees may not take intermittent leaves or go on reduced work schedules that reduce the number of hours worked per week or per day for childbirth/infant care or adoption leave.
- J. 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% of the work days during the 12-month period, the employee must choose either to:

1. Take leave for a period or periods of a particular length, not greater than the length of the planned medical treatment; or

"Instructional employees" include teachers, instructional assistants, coaches, and other employees whose duties principally involve the direct provision of instructional services to students. In the event an employee involuntarily takes additional leave time under subparagraph 1, above, the entire leave time shall be counted against the employee's available leave under the FMLA and any District leave policy.

- K. If any employee requests 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.
- L. The responsibilities of instructional employees near the end of academic terms examinations, grading, etc. require that the School District be able to limit leave taking by instructional employees at such times as follows:
 1. Leaves beginning more than five weeks before the end of a semester: If an instructional employee starts a leave more than five weeks before the end of a semester, the School District may require the employee to continue the leave until the end of the semester if:
 - a. The leave is of at least three weeks' duration; and
 - b. The employee would return from leave during the three week period preceding the semester's end.
 2. Leaves beginning five weeks or less before the end of a semester: If an instructional employee begins a leave five weeks or less before the end of a semester, the School District may require the employee to continue the leave until the end of the semester if:
 - a. The leave will last more than two weeks; and
 - b. The employee would return from leave during the two week period before the term end.

3. Leaves beginning three weeks or less before the end of a semester: If an instructional employee starts a leave three weeks or less before the end of a semester, the School District may require the employee to continue the leave until the end of the term if the leave will last more than five working days.
- M. All requests for family/medical leave must be approved by the employee's supervisor and the Director for Human Resources.
- N. Employees who take family/medical leave must utilize any available paid leave they have accrued under another of the District's leave policies when the reason for leave corresponds with the basis for leave under the other policy. Accrued vacation or personal leave shall be substituted for any FMLA-qualifying purpose. If the requested leave period extends beyond the employee's accrued number of paid leave days, the remaining leave days will be unpaid.

Example: An employee who sought leave due to his or her own serious medical condition and inability to perform his or her job duties has accrued six weeks sick leave. The employee must use the six weeks of paid sick leave and may thereafter use the remaining six weeks of unpaid leave available under this policy.

Any employee seeking leave shall explain the reasons for the needed leave on forms provided by the School District. It shall be the School 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 School 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.

- O. During the period of leave, the School District will maintain the School District group-coverage health-plan if the employee is 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, the District will pay both portions while the employee is on leave and recover these payments upon return to work.

If the employee fails to return to work following leave under the FMLA for any reason (1) other than the continuation of the FMLA-qualifying circumstances upon which the need for leave was originally based, or (2) circumstances beyond the control of the employee, the employee shall be required to reimburse the District for the cost of health insurance premiums the School District paid to maintain coverage for the employee during the leave period.

- P. Employees will not accrue leave or other benefits during the family/medical leave period.
- Q. An employee other than a "key employee," who has taken family/medical leave will be restored to his or her previous position or to a position of equivalent pay, benefit,

and other terms and conditions of employment. 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 School District. A "key employee" is one whose compensation is within the highest 10 percent of the work force of the School District.

- R. While on leave, the employee may be required to furnish the School District with periodic reports of their status and intent to return to work as stated in ' 825.309 of the FMLA regulations.
- S. The employee may also be required to furnish re-certification relating to a serious health condition as stated in '825.308 of the FMLA regulations.
- T. In each School District building there shall be posted a notice to employees, describing the provisions of the FMLA, provided and approved by the Wage and Hour Division of the United States Department of Labor.

5.24.4. PROCEDURES FOR SUBMITTING FAMILY/MEDICAL LEAVE REQUEST

Employees requesting family/medical leave absence are required to:

1. Submit a "Leave Request Form" to the Superintendent at least 30 days prior to the requested leave period. If the leave must be taken in less than 30 days, the employee must schedule an appointment with the Director for Human Resources for approval.
2. The Superintendent will advise the employee in writing of the employee's obligations under the FMLA within two (2) work days from receipt of the employee's written request for leave.
3. If the requested family/medical leave is for treatment of an employee's serious medical condition or for treatment 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 School District and must give at least 30 days notice of the leave. However, if the leave must be taken in less than 30 days, the employee must schedule an appointment with the Director for Human Resources for approval.
4. In cases where the employee is requesting leave based upon the serious health condition of a child, spouse or parent, or the employee's own serious health condition, the employee must provide certification of his or her condition by a health care provider. This certification must be submitted with the leave request form.

5.24.5. PROFESSIONAL LEAVE

Professional leave shall be defined as authorized absence from regular duties to participate in professional activities which directly relate to the enhancement of job performance. Educational activities may include attendance at national, state or local education meetings held while Mountainair Public Schools are in session. Approved professional leave shall be granted without reduction in the Employee's salary. Professional leave should not be interpreted to include involvement in community or fraternal activities, unless the Superintendent deems such leave as beneficial to the School District and/or relates to the enhancement of the employee's job performance. A School District Leave Request form must be completed in conjunction with School District requirements.

In extreme cases of personnel attending summer school while under contract, the Superintendent may grant professional leave on a compensatory makeup basis. A compensatory schedule must be submitted by the Employee when leave is requested.

5.24.5.1. Procedures for Leave Request Forms

The following procedures will be utilized for School District Leave Request Forms which are to be completed for professional leave, FMLA leave, personal leave in excess of three (3) days, association leave, and other leaves reported on the School District Leave Request Form:

- A. Employees will complete a Leave Request Form and submit the form to their supervisor for approval.
- B. The supervisor will approve/disapprove the leave request. If approved, the Leave Request Form will be forwarded to the appropriate Central Office Administrator for approval, if necessary. Once the Central Office Administrator has approved/disapproved the leave, the Leave Request Form will be returned to the supervisor. The supervisor will then notify the employee whether or not their leave has been approved.
- C. Leave Request Forms will be kept on file by the supervisor. After completion of the leave, the completed Leave Request Form is to be sent to the Business Office.

5.24.6. PERSONAL LEAVE

Personal leave shall be defined as any absence from regular duty not specifically classified as sick leave or professional leave. Examples of personal leave include personal business, legal, and family matters.

Three (3) days of sick leave may be used for personal leave during each fiscal year. No salary deduction will be made for three (3) days. Personal leave is not cumulative and any unused personal leave will remain in the employee's sick leave balance.

An employee is requested to give as much notification as possible to the supervisor when taking personal leave.

An employee requesting personal leave beyond three (3) days must submit a School District "Leave Request Form" to the supervisor for approval at least ten (10) work days prior to the beginning of the requested leave. Personal leave beyond the initial three (3) days will be deducted from the employee's salary at the daily salary rate. There will be no further deductions from the employee's accumulated sick leave following the initial three (3) days.

The supervisor may deny a request for Personal Leave if a substitute is not available or the work load does not permit approving the request.

Personal leave will not be granted before or after a designated holiday or break. Exceptions may be granted by the Superintendent or designee on a case-by-case basis. Written requests specifying the circumstances for requesting personal leave must be submitted at least seven (7) work days prior to the holiday or break. In emergency circumstances this time requirement may be waived. The case-by-case determination will include a review of the employee's leave history before or after a designated holiday or break.

5.24.7. LEGISLATIVE LEAVE

An employee elected as a state representative or senator will be granted personal leave for the number of days constituting the legislative session. Salary deductions for legislative leave will be at the rate of the substitute's salary. Any additional days requested and approved will be at the rate of one day's salary based on total contractual days.

5.24.8. JURY DUTY/WITNESS SUBPOENA

According to New Mexico law, school employees are subject to jury duty if summoned and accepted jury duty by the State District Court for the county in which the employee resides or by the United States District Court for the District of New Mexico.

New Mexico law also stipulates that subpoenaed witnesses must appear in Court at the date and time specified. Under these circumstances, employees will be granted professional leave and will be excused from work with pay. If the supervisor believes it is necessary that the employee be excused from jury duty due to essential school activities, then the supervisor will notify the Superintendent. Should the Superintendent deem the reason valid, a request will be made to the State District Judge or United States District Judge for the Employee to be excused from jury duty. The request should be made in advance of the day the employee is to appear for jury duty. All employees must complete a School District Leave Request form indicating their absence from work to serve as a witness or appear in court for jury duty. All employees are expected to report

back to their work site if released from jury duty during their regularly scheduled work hours. If a substitute has been secured, the supervisor has the option of reassigning that substitute to another location as needed.

State employees are not paid for jury duty unless they are serving during unpaid leave such as winter break, spring break, summer break, holidays, etc. Payment for serving on jury duty during periods of unpaid leave and travel reimbursement are the sole property of the employee.

The supervisor may request any employee to provide a sealed notice verifying his/her attendance for jury duty. The notification is easily obtained from the court clerk upon request; however, it will only be sealed at the end of the day.

5.24.9. MILITARY LEAVE

The Uniformed Services Employment & Reemployment Rights Act (USERRA) and as amended in the future requires that employees be granted a leave of absence to perform their military duties. In the event of any conflict between the provisions of this or any other leave policy of the Board of Education and the provisions of the USERRA, the latter shall prevail.

USERRA and this Policy allows for rights and benefits provided that:

1. The Employee has given advance written notice or verbal notice of military service to the School District (notice can be from the military itself and no notice is required if a military necessity prevents notification);
2. The cumulative length of the Employee's absence and all previous absences from his or her job for military service does not exceed five years; and
3. The person reports to or submits an application for reemployment to the School District.

After the Employee has been absent for 31 days or more for military service, the School District may ask the Employee or the Employee's military unit for documentation showing that:

1. The Employee submitted a timely application for employment;
2. The Employee's length of military service has not exceeded the five year limitation; and
3. The Employee's separation from military service meets the requirements for reemployment.

If the Employee cannot provide this documentation because it is not readily available or does not exist, the employer is still required to promptly reemploy the returning employee.

It is important to note that the USERRA and this Policy requires the employee to submit an application for reemployment and report for work within specific time periods depending on the length of the Employee's military service. The time limits for reporting for work are as follows:

- *1 to 30 days of military service:* The Employee reports to the School District by the beginning of the first scheduled work day that falls eight hours after the end of the last calendar day of military service. This means that a service member who returns home at 10:00 p.m. can be required to report for work for 6:00 a.m. work-shift the following day. This same guideline applies to an Employee who has been ordered to take a fitness-for-service examination regardless of the length of the service member's absence from the job.
- *31 to 180 days of military services:* The Employee must submit an application for reemployment no later than 14 days after completion of military service. If the 14th day falls on a day when the School District is closed or unavailable to accept a reemployment application, the time is extended to the next business day.
- *181 days or more of military service:* The Employee must submit an application for reemployment no later than 90 days after completion of military service. If the 90th day falls on a day when the school district is closed or unavailable to accept a reemployment application, the time is extended to the next business day.
- *Cases of disability:* Employees who are hospitalized or recovering from a disability that relates to the employee's military service have up to two years to submit an application for reemployment.

Failure to report under this timetable will not automatically forfeit the Employee's entitlement to rights and benefits but will subject the service member to the same rules, policies and procedures the School District has for other employees returning from leave.

Provided that the service member meets the prerequisites of the statute, reemployment must occur in a specific order of priority.

- If the period of military service for the employee was 90 days or less:
 1. The service member must be reemployed in the position he or she would have occupied had the employment with the School District not been interrupted, provided the Employee is qualified or can become qualified with reasonable effort on the part of the School District;
 2. The service member must be reemployed to the position the employee held on the date that the Employee entered military service, provided the Employee is qualified or can become qualified with reasonable effort on the part of the School District; and if the Employee cannot become qualified in either case (except for an incurred

disability), he or she must be reemployed in a position that the Employee can perform and which closely approximates the positions above, with full seniority.

- If the period of military service for the employee was 91 days or more
 1. The service member must be reemployed to the job the Employee would have held had the Employee remained continuously employed, or a position of like seniority and status, provided the Employee is qualified or can become qualified with reasonable effort on the part of the School District;
 2. The service member must be reemployed to the position the Employee held on the date that the Employee entered military service, or a position of like seniority and status, provided the Employee is qualified or can become qualified with reasonable effort on the part of the School District; and
 3. If the Employee cannot become qualified in either case (except for an incurred disability), he or she may be reemployed in a position of lesser status or pay, that the Employee can perform, but that most closely approximates the positions above, with full seniority.

If two or more returning service members are entitled to the same position, then the service member who left home first for military service has the priority. Although the focus of the USERRA and this Policy is on reemployment, the statute also includes the right to returning service members to be free from discrimination in initial employment, retention, promotion or benefits, pension, health benefits, vacations and seniority work selection rights. The USERRA also protects covered employees from retaliation for engaging in certain protected conduct specified in the USERRA.

With regard to seniority, the escalator principle requires the School District to place returning service members back into the seniority escalator at the point the Employee would have occupied had he or she remained continuously employed. This could result in the Employee acquiring tenure rights under the N.M. Stat. Ann. ' 22-10A-24(A) (2003) without three years of continuous employment with the School District. Additionally, if the Employee accepted an employment contract for the upcoming school year, but had yet to work in that position before being called to military service, the returning service member is entitled to the contracted position upon his or her return. Also, any seniority benefits that would have accrued to the Employee for example, FMLA, salary increases, sick and personal leave accrual, must be granted to the returning service member upon reemployment.

Returning service members may be disqualified for reemployment under four conditions:

1. A dishonorable or bad conduct discharge;
2. Separation from military service under a other than honorable conditions;
3. A commissioned officer's dismissal via a court martial or by order of the President; and

4. When a service member is absent from his duty station without authority or because of civilian imprisonment.

As many service members are returning from the war injured or wounded, the School District also has certain obligations regarding reemployment of service members who incurred disabilities or aggravated disabilities during military service. There are three guiding steps which govern reemployment of service members with disabilities:

- The School District must take reasonable efforts to accommodate the returning service member's disability so the Employee can perform the job he or she would have occupied had he or she remained continuously employed.
- If despite reasonable accommodation, the Employee is not qualified for the position above, he or she must be employed in a position of equivalent seniority, status and pay so long as the Employee is qualified to perform the duties of the position or could become qualified to perform them with reasonable efforts by the School District.
- If the Employee does not become qualified in either case above, he or she must be employed in a position which most closely approximates in seniority, status and pay, the position held just prior to entering military service.

Reemployment of a returning service member is not required under the following circumstances:

- If the School District's circumstances have changed so much that reemploying the Employee would be impossible or unreasonable. An example is a reduction in force that would include the Employee's position.
- If the Employee left an employment position that was for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.
- The School District is excused from efforts to qualify or accommodate returning employees with military service-related disabilities when doing so would be so difficult or expensive as to cause the School District an undue hardship as determined under the USERRA.
- Service members forfeit their reemployment rights if, prior to leaving for military service, the Employee provided an informed, clear, written notice of intent not to return to work. However, the burden of proof rests with the School District to prove that the Employee knowingly provided clear written notice of intent not to return to a position of employment after military service and, in doing so, was aware of the specific rights and benefits to be lost.

As provided under state law, N.M. Stat. Ann. ' 20-4-6 (1978), this Policy prohibits any adverse action against applicants or employees on the basis that the person is a member of or has applied for membership in the National Guard.

In addition, under N.M. Stat. Ann. ' 28-15-1 (1978), this Policy requires reinstatement of an employee to the same or like position unless it is impossible or unreasonable for the School District. If the Employee is honorably discharged or released from military service to complete his or her remaining service in a reserve component, and if the Employee is still qualified to perform the duties of the position he or she previously held, the Employee shall be deemed to meet all the requirements of the School Personnel Act, as well as all residency requirements or other provisions of state law, and shall be restored to such position or to a position of like seniority, status and pay. The language in N.M. Stat. Ann. ' 28-15-2 (1978) states that the restored employee shall not be discharged by the School District from his or her position without cause within one year after such restoration and shall be incorporated into this Policy.

As provided in N.M. Stat. Ann. ' 20-4-7 (1978), this Policy grants Employees of the School District who are members of organized units of the Army or Air National Guard or Army, Air Force, Navy, Marine or Coast Guard reserves up to fifteen (15) working days of military leave with pay per fiscal year in addition to other leave or vacation time with pay to which such employees are otherwise entitled. Additionally, the Governor may grant any member of the National Guard or reserves additional military leave with pay for training when he deems that such training will benefit the State by enabling that employee to better perform the duties required.

5.24.10. LEAVE WITHOUT PAY

Leave without pay will be in effect when an Employee has exhausted all sick leave and matching leave due to illness of the employee or the immediate family member or other extenuating circumstances. Leave without pay is not authorized for personal business which infringes upon the Employee's District contractual obligations. Unauthorized leave taken by an Employee will be considered leave without pay.

The need for leave without pay will be determined by the Superintendent or his or her designee.

An employee on leave without pay will be docked at their daily rate. Twelve month employees who are in leave without pay status will not earn annual leave for the period when leave without pay is in effect. An employee on leave without pay will be dropped from the District payroll and will be responsible for the payment of their insurance/benefit premiums.

5.24.11. UNPAID LEAVE OF ABSENCE

The Superintendent desires to meet the needs of employees for extended leaves of absence. Decisions regarding extended leave of absence requests should be made in a manner

that ensures that leave will not have a negative impact on students. An employee may request an unpaid leave of absence for a period of up to one contractual year. The Superintendent must approve all requests for unpaid leave of absences and will give serious consideration for such leave under the following circumstances:

1. Unpaid leave requests to accommodate the employee's physical, medical and mental health needs.
2. Unpaid leave requests to accommodate pregnancy or adoption.
3. Unpaid leave requests for the employee to continue formal education.
4. Unpaid leave requests for the employee to take part in a foreign teacher exchange or to teach in a foreign country.

All requests will be considered on an individual basis by the Superintendent.

During the unpaid leave of absence, the employee will retain placement on but not advance on the salary schedule and will retain all accumulated sick leave, but may not use sick leave. The employee will not lose any acquired tenure rights and will waive any claim to unemployment compensation for the period of unpaid leave. The employee may continue in the School District's health and life insurance group plan provided that payment of both the employee's and School District's portion of the monthly premiums are made by the employee on the established due date. A failure to pay the monthly premiums as agreed upon will result in the termination of coverage.

5.24.11.1. Procedures for Unpaid Leave of Absence

1. A request for unpaid leave of absence must be submitted in writing to the Superintendent of Schools. The request must contain the reason for such leave and the period of time that the employee will be absent from work.
2. All requests for unpaid leave of absence must be made as far in advance as possible, but at least 30 days notice must be given to the employer prior to the start of such leave. Any request that does not meet the 30-day required notice will be considered on an individual basis.
3. Except in emergency situations, an unpaid leave of absence must begin and end at semester and/or at the end of the school year.
4. If the unpaid leave of absence is for a full school year, the employee must notify the Superintendent in writing no later than April 1 whether he/she intends to return to work at the start of the following school year. The School District will not guarantee the employee's return to the vacated position and placement for the following school year will be at the discretion of the School District. Failure to notify by this date will be treated as a resignation from the School District.

5. If the unpaid leave of absence is for less than a full school year, the employee must notify the Superintendent at least sixty (60) days before the conclusion of the leave of his/her intent to return on the agreed-upon date. The School District will not guarantee the employee's return to the vacated position, and placement for the following school year will be at the discretion of the School District. Failure to notify within the required time limit will be treated as a resignation from the School District.
6. Unpaid leave of absences for a serious illness, pregnancy, birth of a child and adoption, will be counted towards the eligible employee's entitlement of unpaid FMLA leave as defined in Board Policy 5.24.4, Family Medical Leave.
7. The Superintendent will notify the employee in writing of the Superintendent's decision on the unpaid leave of absence request.

5.24.12 **Bereavement Leave** (Board Approved on 03/09/2010) (Board Approved on 1/10/17)

Three (3) days of bereavement leave are available to each employee. Bereavement leave is not accumulative and unused leave will not transfer to the employee's sick leave.

Bereavement leave is to be used only in the event of a death of a member of the employee's immediate family. **If more than one death occurs within the school year, each situation will be considered by the superintendent.**

For the purposes of this policy, immediate family consists of an employee's spouse, child, grandchild, parent, sister, brother, grandparent, son-in-law, daughter-in-law, brother-in-law, father-in-law, mother-in-law, and/or any others who live in the same household with the employee at the time of death.

5.25. VACATIONS

It is the policy of the Board of Education to grant annual vacation in accordance with the guidelines established in this Policy.

1. Employees are required to complete a Vacation Request form and obtain prior approval from their immediate supervisor prior to the date of scheduled leave.
2. The established vacation term is from July 1 through June 30 of the next year. Vacation days are earned based upon actual days worked.
3. Twelve-month employees will earn ten (10) days annual leave per contract year.
4. Vacation leave days earned are not property and cannot be donated or sold by the Employee to another employee of the School District.

5. Vacation time may be taken during the school year that it is earned, but no more than has been earned at the time it is taken.
6. Vacation time must be taken in no less than 1/2 day increments when school is in session.
7. If an employee has a change in plans which prevents their taking vacation leave as approved, it is the employee's responsibility to notify their immediate supervisor of the change before the date of the scheduled leave.
8. Twelve-month employees may accumulate up to ten (10) days of vacation leave. The Superintendent may accumulate up to thirty (30) days of vacation leave. Any leave beyond these limits must be used by June 30 of the current contract year or within 18 months after the granting of a special provision to extend the limits. Special provisions to extend the limits of accumulated vacation leave by twelve-month employees may be approved by the Superintendent. The Superintendent may extend the limits of accumulated vacation leave by receiving the approval of the Board of Education.
9. Upon cancellation of the employment contract, no payment shall be made for more than ten (10) days of unused vacation leave for twelve-month employees and thirty (30) days for the Superintendent.
10. Any employee who feels there is a discrepancy in the calculation of his or her vacation may request a review of that calculation by the Superintendent.

5.26. PROFESSIONAL LIABILITY

The School District maintains insurance policy protection for staff members in their carrying out of school policies, rules and regulations. The employees of the School District are insured through the New Mexico Public Schools Insurance Authority for civil rights, personal injury and errors and omission cases. The School District will obtain insurance for property, automobile and general liability cases the purchase of which will be approved by the Board of Education.

School District policies for insurance coverage may be examined by the employee upon written request and will be reviewed in the presence of the Superintendent or his designee.

5.27. NON-SCHOOL EMPLOYMENT

A teacher contracting for or performing any other employment which will result in absence from duty required under the school contract, may have his or her contract terminated after a hearing is provided, as provided by law, and a written complaint filed with the Public Education Department.

This shall not prevent a teacher from holding an office not incompatible to the teaching profession or performing any activity allowed a qualified elector as provided by the Constitution.

5.27.1. CONSULTING

The employee will not accept a position as a consultant without approval of the Superintendent or designated representative. Consulting must not infringe on the assigned duties of the employee.

5.27.2. TUTORING FOR PAY

There will be no tutoring of students for pay during the school day. Employees engaged in tutoring of non-School District students during non-duty hours for pay must inform their clients and prospective clients that such tutoring is not associated, approved or endorsed by the School District and the School District is not responsible for the conduct of tutors.

5.28. PROFESSIONAL ORGANIZATIONS

Membership in a professional education association is voluntary. Professional association activities shall not interfere with a staff member's accepted responsibilities to the School District. The Mountainair Public Schools will not encourage or discourage Employees from joining or failing to join employee organizations or professional associations.

5.29. PROFESSIONAL PUBLISHING

The Board of Education recognizes that staff members are in a unique position to create written material of benefit to the field of education. However, the staff member must place his duties and responsibilities to the School District first, and must have approval of the Superintendent before utilizing material and information from within the School System for publication purposes.

5.30. GROUP INSURANCE

The Board of Education, as a service to employees, participates with New Mexico Public Schools Insurance Authority for group insurance benefits.

5.30.1. BOARD PARTICIPATION

The Board of Education may participate in payment of the insurance premiums up to the maximum allowed by state statute. The amount of Board participation will be determined by the availability of funds on an annual budget year basis.

5.30.2. COVERAGE

New Mexico Public Schools Insurance Authority provides health, dental, vision, life and disability coverage as District options.

5.30.3. RETIRED EMPLOYEES

Employees retiring through the Educational Retirement Board may continue benefits through the New Mexico Retiree Health Care Authority.

5.30.4. COBRA ACT

In the case of divorce or legal separation resulting in loss of insurance, the employee's spouse is eligible for continued coverage for thirty-six (36) months from the date of the divorce. Employees are required to report the dissolution within sixty (60) days of the divorce so that the ex-spouse may be advised in writing of his or her right to continued group health plan coverage.

5.31. REPORTING STUDENT ABUSE OF ALCOHOL OR DRUGS

School District employees who know or, in good faith, suspect any student of using or abusing alcohol or drugs shall immediately report such use or suspected use to the pursuant to procedures established by in this Policy. So long as such report is made in good faith, the reporting school employee shall be free of retaliation or disciplinary action related to reporting. This Policy is enacted to provide a procedure to be followed by all School District employees in reporting known or suspected use or abuse of alcohol or drugs by students.

All employees have a mandatory, non-discretionary duty to immediately report known or suspected alcohol or drug use or abuse by any student of the School District.

All reports made shall be on a uniform reporting form, available from the principals, and shall be given to the principal or school counselor of the school in which the student is enrolled.

Reports shall be made within a reasonable time after the employee learns or suspects the use or abuse of drugs or alcohol by a student.

It is not the duty of the school employee making the report to conduct an investigation to determine whether the student identified has, in fact, used or abused drugs or alcohol. The duty to investigate shall be upon the principal or school counselor to whom the report is made, provided however, that the reporting employee shall cooperate with responsible school officials during the course of any investigation.

The failure of any school employee to report knowledge or suspicion of student alcohol or drug use in a timely manner may be cause for discipline of the employee, including discharge or termination.

**5.31.1. DRUG-FREE SCHOOLS AND CAMPUSES AND 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 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.

1. The Mountainair Public Schools prohibits the employees of the School District from unlawfully manufacturing, distributing, dispensing, possessing or using alcohol or controlled substances in the workplace. Violation of this prohibition may result in termination or discharge or other appropriate disciplinary action, including referral to law enforcement.
2. "Controlled substance" shall mean any narcotic drug, **edible**, hallucinogenic drug, amphetamine, barbiturate, or other controlled *substance*, as defined in schedules I through V of Section 202 of the Controlled Substances Act (21 USE 812 C) and as further defined by regulation 21 CFR 1300.11 through 1300.15.3 as amended in the future. "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. 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, notify his immediate supervisor in writing of such conviction. The Superintendent of Schools, upon receiving such written notice, shall take one of the following actions within thirty (30) days:
 - a. Impose appropriate personnel action against the employee up to and including termination or discharge; or
 - b. 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. Payment for treatment is the sole responsibility of the employee.
4. Employees who have drug or alcohol abuse problems are encouraged to voluntarily seek assistance.

5. A drug awareness program shall be established within the School District to inform all employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The School District's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and assistance program; and
 - d. The penalties that may be imposed upon employees for drug abuse violation occurring in the workplace.
6. Each employee of the School District shall be given a copy of this Policy at the time of initial employment and shall be notified that compliance with the terms of this Policy is mandatory.
7. The School District shall make a good faith effort to maintain a drug-free workplace through implementation of this policy.

5.31.2. SEARCHES AND SEIZURES

The Board of Education, in recognition of the necessity of conducting searches and seizures of employees and students from time to time in order to enforce school policies and discipline, adopts the following policy regarding searches and seizures. School property assigned to a student and a student's person or property while under the authority of the public schools are subject to search, and items found are subject to seizure, in accordance with the requirements below.

1. Definition – As used in this policy “contraband” means any substance, material or object prohibited from school pursuant to school policy or state or federal law, including drugs, alcohol, fireworks, or weapons.
2. Notice of Search Policy – Students shall be provided a copy of the policy at the beginning of each school year or upon admission for students entering during the school year.
3. Rules Regarding Searches and Seizure – With respect to both employees and students, the School District reserves the right to search persons, personal effects, and vehicles as follows:
 - A. A pat-down search of a person may be conducted on the basis of a reasonable, individualized suspicion that such person is in possession of contraband. Any such search shall be conducted in private by an authorized school official of the same sex as the person

to be searched and in the presence of a witness of the same sex. Strip searches are not permitted.

- B. Lockers, desks, and similar storage facilities are school property and remain at all times under the control of the school; however, persons using such facilities are expected to assume full responsibility for the security of their lockers and desks and similar facilities. Periodic general inspections of lockers, desks, and similar facilities may be conducted by school officials for any reason, at any time, without notice and without consent.
- C. Persons are permitted to park on school premises as a matter of privilege, not of right. Every student who wishes to drive or park vehicles on school premises shall obtain a parking permit from the School District and shall display such permits on the vehicle. Application for a parking permit shall constitute express permission by the student and parent that the vehicle may be searched by, or at the direction of, authorized school officials at any time it is on school premises, and a waiver of any and all claims arising from any such searches. The School District also retains the authority to conduct routine patrols of school parking lots and inspections of the exteriors of automobiles on school property. Such patrols and inspections may be conducted without notice and without consent.
- D. In any of the forgoing enforcement actions, the administration is authorized to use dogs whose reliability and accuracy for sniffing and detecting contraband has been established. The dogs will be accompanied by a qualified and authorized dog trainer-handler who will be responsible for the dog's actions. Any indication by the dog that an illegal or unauthorized substance or object is present on school property or in a vehicle on school property shall be reasonable cause for a search by school officials.

4. Implementation of searches and seizures shall be governed by administrative guidelines promulgated by the Superintendent.

5. Seizure of Items – Illegal items, legal items that threaten the safety or security of others, and items which are used to disrupt or interfere with the educational process may be seized by authorized persons. Seized items shall be released to appropriate authorities or a student's parent or returned to the student when and if the administrative authority deems appropriate.

6. Notification of Law Enforcement Authorities – Unless a local School Board policy provides otherwise, an administrative authority shall have the discretion to notify the local Children's Court attorney, district attorney, or other law enforcement officers when a search discloses illegally possessed contraband material or evidence of some other crime or delinquent act. (Rev. 6/19/2012)

5.32. SUSPECTED CHILD ABUSE AND NEGLECT

According to the New Mexico Children's Code at N.M. Stat. Ann. ' 32A-4-3 (A) (1978) (as amended or recoded in the future), it is the obligation of any staff member to report suspected cases of child abuse or neglect immediately to:

1. A local law enforcement agency having jurisdiction; or
2. The Child Prevention Division of the Children, Youth and Families Department.

This reporting process does not require that suspected cases must first be reported to the administrative authority of the School unit or department. Administrators do not have the authority to screen the reporting process; however, the staff members should notify the administrator that a report has been made.

Any school employee who has the duty to report child abuse shall permit a member of a law enforcement agency or an employee of the Child Prevention Division of the Children, Youth and Families Department to interview the child with respect to a report without the permission of his parent, guardian, or custodian. Any person permitting an interview is presumed to be acting in good faith and shall be immune from liability, civil or criminal, unless the person acted in bad faith or with malicious purpose.

Any questions of staff by parents, guardians, or custodians shall be referred to the administrator.

Employees are placed on notice that any person failing, neglecting or refusing to report may be guilty of a misdemeanor crime if convicted. (New Mexico Children's Code, NMSA 32A-4-3, 1978 Comp.)

Anyone reporting an instance of alleged child neglect or abuse or participating in a judicial proceeding brought as a result of a report required by law is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by the law, unless the person acted in bad faith or with malicious purpose (New Mexico Children's Code, NMSA 32A-4-5(B), 1978).

5.33. VOLUNTEERS

The willingness to provide volunteer services to the Mountainair Public Schools is supported and appreciated by the School District. Parents and community members are encouraged to act as volunteers in assisting with the educational mission within the legal framework in which Mountainair Public Schools operates.

Individuals who volunteer their services to state or local governments and receive no compensation are excluded from the definition of "employees" and are thus excluded from coverage. An employee of a state or local government may not volunteer to his own agency services of the same type the employee is employed to perform.

All individuals requesting to volunteer in the School District for more than 40 hours during the school year are required to apply with the Superintendent. Volunteers must have the following:

1. Criminal background check paid by the volunteer or the requesting school; and
2. Waiver statement and volunteer information sheet.

The Superintendent will notify the school when the paperwork is complete. Once the school receives notification, the school may contact the volunteer to report to the school.

Supervision of volunteers in the schools shall be the responsibility of the principal or delegated staff members. As a general rule, volunteers should not have unsupervised access to a student or students. Volunteers must be in the constant presence of school personnel. A special situation may arise which will cause a volunteer to be unsupervised. If such a situation arises, the volunteer having unsupervised access to a student or students and not in the constant presence of school personnel will be required to obtain a FBI criminal background check (cost \$44 paid by the volunteer or the requesting school). Volunteers will not be allowed to have unsupervised access to a student or students until the results of the criminal background check are received by the Superintendent.

Volunteers that have obtained a recent criminal background investigation through an established mentoring program such as Children, Youth and Families may obtain a waiver provided that appropriate documentation is supplied.

The District reserves the right to exclude a volunteer from working in the schools.

5.34. TOBACCO FREE SCHOOLS POLICY

The Board of Education for the Mountainair Public School District recognizes that the use of tobacco products presents a health hazard that can have serious implications both for the smoker, non-smoker, user, and non-user. The Board of Education further recognizes the importance of its employees serving as role models for its students. Pursuant to the provisions of the Public Education Department Regulation 6.12.4 NMAC, Regulation on Tobacco Free School Districts, July 19, 1994.

The Board acknowledges that adult employees and visitors serve as role models for students, to promote further the health of all students and staff, and to promote cleanliness of all facilities, tobacco use (including cigars, cigarettes, pipes, e-cigarettes and smokeless tobacco products) shall be prohibited on all school property, including all property owned or leased by the District including school buildings, grounds, and school-owned vehicles.

This ban extends to all employees, students, parents and patrons attending school-sponsored events and meetings during or after the regular school day including non-school hours (24/7). This ban extends all school-sponsored activities outside the School District.

Procedures developed by the School District to communicate this Policy to students, employees, parents, school visitors and the community are to include but are not limited to

conspicuously posted signage on all school property, announcements at school-sponsored events and inclusion in all student and employee handbooks.

A violation of this policy by any employee of the School District will be considered insubordination and will subject the employee to disciplinary action pursuant to existing policies of the School District. In recognition of the addictive nature of tobacco use, the District encourages employees to participate in tobacco use cessation programs made available by the School District.

A violation of this Policy by any student will result in immediate disciplinary action as specified in the District Elementary & Secondary Disciplinary Policies. In recognition of the addictive nature of tobacco use and as a possible alternative to disciplinary action, students may choose to participate in tobacco use cessation programs made available by the School District.

Citizens who are observed smoking or using tobacco products on School District property in prohibited areas shall be asked to refrain from using tobacco products on school property. Repeated violations will result in prohibiting the individual from entering School District property for a specified period of time.

5.35. EMPLOYEE ACCIDENTS

All employees are covered under the provisions of Worker's Compensation for injuries occurring on the job. Accident reports must be completed and forwarded at the time of injury to the immediate supervisor for transmittal to the Superintendent.

5.35.1. ACCIDENT REPORTING

The School District is required to keep records of all accidents that occur during the workday. The District requires that employees report any occupational illness, communicable disease, and occupational injury on the job to their supervisor. If an employee fails to report any injury or fails to fill out the appropriate paperwork, the employee may jeopardize their right to collect Workers' Compensation benefits.

School District-owned vehicular accidents will be reported to the Director of Transportation **and Superintendent.**

Employee on-the-job accidents will be reported to the Superintendent.

Student accidents to and from school and on school property shall be reported on the appropriate form to the principal/director and then forwarded to the Superintendent.

Patron accidents on School-owned property shall be reported on the appropriate form to the site supervisor and then forwarded to the Superintendent.

5.35.2. SAFETY PROCEDURES

It is the responsibility of every employee to read and follow safety instructions given. Safety is to be given primary importance in every aspect of planning and performing in the District. Principals and/or Supervisors will post safety procedures at their site. Below are some examples:

1. Use and store flammable items in approved cabinets with caution and according to label instructions.
2. It is the employee's responsibility to know where the Materials Safety Data Sheets (MSDS) are kept at their site.
3. Report to a supervisor and/or principal if a co-worker becomes ill or is injured.
4. Ask for assistance when lifting heavy objects or moving heavy furniture.
5. Sit firmly and squarely in chairs that roll or tilt.
6. Use a site-designated stepladder for all jobs performed above your arm's reach.
7. Do not stand on tables and/or chairs.
8. Employees with a physical limitation are responsible for limiting activities that may cause further injury.
9. Wear/use appropriate personal protective equipment (PPE) for staff and students as required.
10. Maintain appropriate housekeeping to prevent hazardous conditions.

5.36. SAFETY/LOSS CONTROL

It is the policy of the Board of Education to provide the safest possible environment for all students and employees with the resources available to the District and consistent with applicable health and safety laws and regulations. The Superintendent will have overall responsibility for the safety/loss control program of the District.

All employees shall care for the safety of students under their control. Every reasonable precaution will be taken to protect the safety of all students, employees, and others present on

District property or at school-sponsored events. Each building site will be required to have available to every employee including substitutes and volunteers, a copy of the Safe School Plan.

This plan will identify all procedures used by the building to keep students and staff safe during emergency situations. This safety plan will be an integral part of the instructional program. Each administrator/supervisor will be responsible for the supervision of a safety program for the department or school.

Employees will report all unsafe conditions to their immediate supervisor, comply with established safety requirements, and participate in safety training programs. Safety committees will be established that will include employee participation.

5.36.1. PROPERTY AND EQUIPMENT CARE

It is an employee's responsibility to utilize equipment in the proper manner. Employees should monitor the condition of the equipment required to perform their duties. If an employee finds that a piece of equipment is not working properly or in any way appears unsafe, the principal or supervisor must be notified immediately so that repairs or adjustments may be made. Equipment should not be used until it is repaired or replaced.

5.36.2. VIOLATION OF SAFETY RULES

Any employee's willful violation of safety rules or failure to observe safety rules or practices, negligence or any careless action that endangers the life and/or safety of themselves and/or other employees, students, or the public, will result in disciplinary action up to and including termination.

5.37. INSURANCE

5.37.1. LIABILITY INSURANCE

The Board of Education will provide adequate insurance to insure itself and School personnel against personal liability as directed by the State of New Mexico. This includes comprehensive liability protection covering members of the Board and employees while acting in the discharge of their duties within the scope of their employment and/or under the direction of the Board.

5.37.2. PROPERTY INSURANCE

All vehicles, buildings and contents which are considered to be in the care, custody and control of the Board are insured under the District's insurance program. The District is not

responsible for loss or damage to any property owned by individuals even should such property be lost, stolen or damaged on School premises.

5.37.3. EMPLOYEE BENEFITS

The Board of Education maintains programs of protection in the area of Employee fringe benefits such as group health, life, disability, dental, vision, and catastrophic disease but only in the kinds and limits authorized by the Board. The School District will provide coverage of employee benefits through August 31 for all nine, ten, and eleven-month employees paid over a twelve month period who terminate or retire at the end of the school year, after fulfilling his/her contract.

5.37.4. WORKERS' COMPENSATION

All employees are covered under the provisions of Workers' Compensation for occupational injuries and illnesses in accordance with the provisions of New Mexico Law (Workers' Compensation Act, Chapter 52, NMSA 1978). The District utilizes a self-directed care approach to Workers' Compensation. Procedures to report an on-the-job injury for Workers' Compensation Benefits are available from the office secretary, principal or the Superintendent.

The day of injury is considered as a full day worked; no sick leave will be charged regardless of time of injury if employee seeks medical treatment. No compensation benefits shall be allowed under the provisions of the Workers' Compensation Act for any accidental injury/illness which does not result in a disability lasting more than seven days; however, if an employee is off work more than four weeks, compensation is retroactive to date of disability.

The weekly compensation rate to the employee by Workers' Compensation for total disability is 66 2/3% of the employee's average weekly gross earnings subject to the maximum specified by law.

An employee may use his accumulated sick leave for the initial seven-day period (normally five working days); however, sick leave would be reinstated if a qualifying disability resulted in an absence of four weeks or more.

Employees retain the compensation received from Workers' Compensation and do not use any of their accumulated sick leave for the time they are absent from work and for which they have received compensation. At this time the employee will be placed on leave without pay. In order to continue current personal insurance benefits (health, dental, etc.), it will be necessary for the employee to pay directly to Mountainair Public Schools the amount of his/her payroll deduction for insurance premiums once he/she has been removed from the payroll to be placed on Workers' Compensation leave of absence. The premium payment will be due in the

District offices on or before the first working day of each month. The District will continue payment of the Board's portion of this insurance premium while the employee is under contract.

The Mountainair Public Schools will require an "Employee's Statement of Health" for all new employees.

5.37.5. STUDENT ACCIDENT INSURANCE

The Board of Education will make student accident and football insurance available for the convenience of students and parents. The Business and Finance Department will administer these insurance programs.

5.38. LAW ENFORCEMENT CONTACT WITH EMPLOYEES

It should not ordinarily be necessary for law enforcement to interview or interrogate employees at school during school hours unless assistance has been requested by the building administrator.

1. Administrative Contact Required

A building administrator shall not prevent law enforcement officials from serving or executing court orders such as summonses, warrants, or subpoenas, upon school property during school time.

If the law enforcement officials have determined that circumstances exist to warrant interviews or interrogation of employees at school, the law enforcement agency shall first contact the Superintendent or designee regarding the planned visit and shall give the Superintendent or designee the reason for conducting the investigation during school hours, school-sponsored activities, or on school property.

An administrator may request and designate a reasonable time and place for law enforcement contact with employees, including for service of process, in order to ensure that the educational process is not disrupted and confidentiality is preserved to the degree possible.

2. Interrogation of Employee Suspects in School

If law enforcement officers deem it necessary to interrogate employee suspects at school during school hours, or during school-sponsored activities, employees are advised they have the following rights:

Employees shall have such rights to refuse to be interviewed or interrogated by law enforcement officials as are afforded them by federal or state criminal laws.

Employees may waive their rights under the federal or state criminal laws and voluntarily submit to interviews or interrogations by law enforcement officials; however, administrators cannot waive these rights on behalf of employees or compel employees to submit to interviews or interrogations by law enforcement officials.

3. Arrests With Advance Notice

If it is necessary for a law enforcement official to arrest an employee during school hours or during school-sponsored activities, the administrator should request that a non-uniformed officer or the services of a school security officer be utilized for the arrest, if possible. If this request is refused, the arresting officer will be requested to sign a statement indicating that such a request was made and refused.

4. Verification and Documentation

Prior to any employee being produced by a building administrator for contact with law enforcement officials, the administrator or designee shall:

- A. Write down the name, badge number, and agency of the officer(s), together with the date and time of appearance.
- B. Confirm by telephone with the law enforcement officer's agency their identity and authorization in seeking contact with the employee. Record the name and position of the person confirming such information and the time of such confirmation.

5.39. COMPLAINTS AGAINST THE SUPERINTENDENT

- A. The Board of Education for the Mountainair Public Schools supervises the Superintendent of Schools. The Board takes its responsibilities regarding its supervision seriously and pursuant to this Policy provides a means for members of the public and School District employees to submit comments and formal complaints against the Superintendent of Schools.
- B. Employees of the School District shall utilize their individual chains of command to resolve matters in dispute before utilizing this Policy. The Board of Education shall not entertain comments nor complaints regarding any pending student discipline or employee grievance matters, as the appropriate forum for such matters is the applicable administrative hearing provided by State law or School District policy or practice. Where possible, employees shall communicate and meet with the Superintendent to resolve all disputes prior to utilizing the procedures of this Policy.
- C. If an individual who uses the Public Comment section of an open Board meeting to bring a formal complaint against the Superintendent of Schools he or she shall make

arrangements following the Board meeting to meet with the Board President or submit the complaint in writing to the Board President. Failure to meet with or submit the formal complaint to the Board President in writing may result in the inability of the Board of Education to complete a proper investigation or take appropriate action with regard to the complaint. It is the duty of the complainant to ensure that sufficient information is provided to the Board President to permit a proper investigation.

- D. If any member of the public or any employee of the School District who wishes to submit criticism or bring a formal complaint against the Superintendent of Schools, may submit it in writing to the President of the Board of Education at a Board meeting or at the following address:

President of the Board of Education
Mountainair Public Schools
P.O. Box 456
Mountainair, NM 87036

- E. The Board of Education shall appoint a third party to investigate any formal complaints made against the Superintendent of Schools which the Board deems to require a formal investigation. No individual member of the Board of the Education will be permitted to take part or conduct an investigation of the Superintendent. During the course of any investigation, the Superintendent will be given an opportunity by the appointed investigator to address the allegations.
1. The report of or findings of any investigation conducted pursuant to this Policy will be given to the Board of Education in executive session. At the discretion of the Board, the Superintendent may be permitted to attend all of or a portion of the executive session.
 2. The Board of Education will take appropriate action regarding the Superintendent's employment following the completion and report of any formal investigation.
- F. The Board of Education places trust in its Superintendent of Schools in the lawful and ethical performance of his or her duties and desires to support his or her actions in such a manner that the Superintendent is freed from unnecessary, false and unfounded complaints. Any individual who is found, based on information and/or evidence from the third-party investigator, to have submitted a frivolous, false or an unfounded complaint against the Superintendent, all materials or information regarding said complaint will be turned over to the Superintendent to permit the Superintendent to explore other possible legal remedies available for such conduct. School District employees may be subject to discipline, including discharge and termination for submitting a frivolous, false or an unfounded complaint pursuant to this Policy.

5.40. EMPLOYEE GRIEVANCE RESOLUTION PROCEDURE

A. Purpose

The purpose of this Policy is to provide a procedure for the reporting and resolution of legitimate employment-related concerns of the employees of this School District at the earliest possible time and with the least possible expense, disruption and friction. The Board of Education recognizes that 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. This grievance policy does not apply to employees' covered by a union Collective Bargain Agreement, unless the Collective Bargain Agreement specifically so provides.

Mediation will always be an acceptable form of resolution at any step in this process. Mediation may be requested by either party at any time, but will only be utilized by mutual agreement of the parties. The costs of mediation shall be shared by the parties or the School District, at the discretion of the Superintendent of Schools, may bear the total costs of mediation. All efforts will be made to locate and acquire the services of a person trained in mediation to act as a mediator. The parties must agree on the selection of the mediator.

B. Definitions and Limitations

1. Grievant shall mean an employee who is personally and directly affected by a condition for which he or she seeks a resolution.
2. 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.
3. Resolution(s) shall be the proposed written decision by the appropriate administrator(s), grievance review committee or Board, in response to the grievance.
4. 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.
5. The following situations are not covered by this grievance procedure and are therefore not grievable under this policy:
 - a. The discretionary act(s) of professional judgment relating to the evaluation of the work performance of any employee by his or her

immediate supervisor, including the issuance of a Professional Growth Plan to address substandard work performance;

- b. Any personnel decision made by the Superintendent of Schools, including, but not limited to, a refusal to re-employ, a discharge, a demotion, or any other action directly and adversely affecting the employment of an employee;
 - c. Any personnel decisions made by the Superintendent of Schools relating to conducting a special employee evaluation, reductions in force, issuance of a Professional Development Plan, evaluations of licensure, performance of investigations of misconduct, placement on administrative leave with pay, transfer, reassignment and assignment of duties and responsibilities;
 - d. Any personnel decisions made by the Superintendent of Schools related to personnel actions regarding amendments to employee's contracts, employment agreements, and/or special increments addendum.
 - e. Situations in which the Superintendent and Board are without authority to act;
 - f. Situations in which the remedy for the alleged violation exclusively resides in some person, agency, or authority other than the Superintendent or Board;
 - g. Situations as to which a different procedure or remedy has been provided by the Board through policy, procedure or practice;
 - h. Situations as to which the procedure within the School District is prescribed by state or federal authority; and
 - i. Situations involving a grievance by a contractor with the School District.
- 6. A grievance cannot be filed by a former employee after the effective date of resignation, termination or discharge of employment.
 - 7. Failure of the grievant to follow the procedure in the succeeding steps as listed below, use of improper petition forms, or use of a bypass procedure through any other means not listed in this process shall render the grievance null and void at the discretion of the Superintendent of Schools.
 - 8. Should a grievant file a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission, the Human Rights Division of the New Mexico Department of Labor or file a complaint with the Office for

Civil Rights for the U.S. Department of Education regarding the matter to be grieved, the grievance will be dismissed without further action. The seeking of other remedies permitted by law or by a union collective bargaining agreement will render a grievance under this Policy null and void.

9. Once the grievance has been resolved or rejected, it may not be re-instituted by the same grievant.
10. A grievance is interpreted to be an unresolved individual issue rather than a group complaint. At no time may the grievance procedure be used as a ploy for "grieve outs" or multiple grievances at one time period by either individuals or groups--formal or informal.
11. At the discretion of the Superintendent of Schools, a grievance may be placed into the grievance process at any step appropriate due to the alleged facts of the grievance or where the level of management would be unable to resolve the grievance.

C. General Procedural Requirements

1. A grievance must be initiated at Level 1, as provided in Section D, within ten (10) work days of the date upon which the grievant became aware of the circumstances which gave rise to the grievance.
2. No persons shall suffer retaliation, recrimination, discrimination, harassment, or be otherwise adversely affected because of his or her use of this grievance procedure.
3. Whenever possible, any grievance conference or hearing at any level shall be scheduled during a mutually convenient time that does not conflict with the regularly scheduled school program.
4. 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 and the expense borne by the School District when hearings must be scheduled during the school day.
5. A separate file shall be maintained by the School District 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 in this Policy shall prevent the School District from using information from a grievance in defense of any legal action initiated against the School District, its administrators or employees.

6. Nothing contained herein shall be construed to limit in any way the ability of the School 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.
7. 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.
8. All grievances shall be filed and processed on grievance forms prepared by the School District and available in the office of each principal or in the School District's central office.
9. 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.
10. Under this Policy, the grievant has no right to representation at any step of the grievance process, unless specifically provided for under a collective bargaining agreement, and the grievant has no right to electronically record any of the meetings or conferences held under this Policy. The Supervisor or Administrator hearing the grievance at any level may permit at his or her discretion representation of the grievant or permit the electronic recording of the meeting at their respective level of the grievance only.
11. 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.

D. 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 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 (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 ten (10) work days of the disposition. The immediate supervisor shall communicate his or her proposed resolution in writing to the grievant within five (5) work days from the filing of the written grievance. 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. The Superintendent shall conduct a closed informal hearing with the parties in interest to the grievance within five (5) 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 five (5) work days following the hearing, the Superintendent shall render his or her written proposed resolution to the grievant. In arriving at his or her decision, the Superintendent has complete discretion in fashioning such relief, if any, as it believes is appropriate, regardless of the relief requested. In all matters related to personnel decisions, the decision of the Superintendent with regard to the grievance shall be final.

Level 4 (Board of Education)

In instances in which determination of the grievance turns upon interpretation or construction of a Board policy or decision, if the grievant is not satisfied with the resolution of the grievance at Level 3 with regard to the specific issues available for Level 4 review, the grievant may make a written request to the Superintendent for a hearing with the Board of Education within five work days after the Superintendent's resolution was rendered or was due, if none was received.

The Board shall schedule an informal hearing within five (5) work days of receipt of the grievance. The procedure for the hearing shall be as follows:

1. Each party in interest to the grievance shall have the opportunity to present oral statements limited to 10 minutes each. The presentation shall be limited to a review of evidence previously presented to the Superintendent, 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.
2. Since grievances are Personnel matters related to the employee the hearing may be conducted in an executive session, if the grievant so requests and the Board votes to close the hearing. The grievant may demand that the hearing be held in open session, in which case the hearing must be open.
3. The Board may make such inquiries of any party in interest as it deems necessary or appropriate.

4. The Board shall render a written decision within a reasonable time. 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.

GRIEVANCE FORM

GRIEVANT: _____

POSITION: _____

STATEMENT OF GRIEVANCE

Date cause of grievance occurred: _____

Date of informal discussion with Party in interest: _____

Description of grievance: _____

(attached additional pages, if necessary)

Relief sought: _____

Date: _____ Signature of Grievant: _____

LEVEL 2
GRIEVANCE PROCEDURE
RESOLUTION

Supervisor: _____

Date Received: _____

Hearing Date (if any): _____

Resolution of Supervisor: _____

Date of Resolution: _____ Signature of Supervisor: _____

POSITION OF GRIEVANT

_____ I am satisfied with the resolution of the Supervisor.

_____ I am not satisfied with the resolution of the Supervisor and hereby appeal the resolution to Level 3.

Date

Signature of Grievant

LEVEL 3
GRIEVANCE PROCEDURE
RESOLUTION

Superintendent: _____

Date Received: _____

Hearing Date (if any): _____

Resolution of Superintendent: _____

Date of Resolution: _____ Signature of Superintendent: _____

POSITION OF GRIEVANT

_____ I am satisfied with the resolution of the Superintendent.

_____ I am not satisfied with the resolution of the Superintendent and hereby request a Level 4 hearing before the Board of Education. (The grievance must meet the specific requirements for Level 4 review otherwise the decision of the Superintendent is final)

Date

Signature of Grievant

GRIEVANCE PROCEDURE
DECISION OF BOARD OF EDUCATION

Date Received: _____

Hearing Date (if any): _____

Decision of Board of Education: _____

Date of Decision

Signature of President

