



## **Ethical Misconduct and Child Abuse Reporting Policy**

The purpose of this Policy is to comply with New Mexico law regarding ethical misconduct in public schools, as well as the reporting of child abuse by school personnel.

### I. Definitions

- A. "Applicant" means an applicant for employment, an individual who is being considered as a contractor, a contractor's employee or an individual who wants to be a school volunteer.
- B. "PED" or "Department" means the New Mexico Public Education Department
- C. "Child abuse" means a child:
  - 1. who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian, custodian or other adult;
  - 2. who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian, custodian or other adult;
  - 3. who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian, custodian or other adult;
  - 4. whose parent, guardian, custodian or other adult has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or
  - 5. whose parent, guardian, custodian or other adult has knowingly or intentionally tortured, cruelly confined or cruelly punished the child.
- D. "Contractor" means an individual who is under contract with a public school and is hired to provide services to the public school, but does not include a general contractor or a building or maintenance contractor who is supervised and has no access to students at the School;
- E. "Ethical misconduct" means the following behavior or conduct by school district personnel, school employees, school volunteers, contractors or contractors' employees:
  - 1. discriminatory practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status or serious medical condition;
  - 2. sexual misconduct or any sexual offense prohibited by Chapter 30, Article 6A or 9 NMSA 1978 involving an adult or child, regardless of a child's enrollment status;

3. fondling a child or student, including touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin or anus; or
  4. any other behavior, including licentious, enticing or solicitous behavior, that is reasonably apparent to result in inappropriate sexual contact with a child or student or to induce a child or student into engaging in illegal, immoral or other prohibited behavior.
- F. "Instructional support provider" means a person who is employed to support the instructional program of a public school, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf and diagnostician.
- G. "Just cause" means a reason that is rationally related to a school employee's competence or turpitude or the proper performance of the school employee's duties and that is not in violation of the school employee's civil or constitutional rights.
- H. "Moral turpitude" means an act or behavior that gravely violates the accepted standards of moral conduct, justice or honesty and may include ethical misconduct.
- I. "school administrator" means a person licensed to administer in a school district, charter school, constitutional special school or regional education cooperative or a person employed with another state agency who administers an educational program and includes local superintendents, school principals, central district administrators, business managers, charter school head administrators and state agency education supervisors.
- J. "School employee" includes licensed and unlicensed employees of a public school.
- K. "School premises" means:
1. the buildings and grounds, including playgrounds, playing fields and parking areas and a school bus of a public school, in or on which school or school related activities are being operated under the supervision of a local school board, charter school or state agency; or
  2. any other public buildings or grounds, including playing fields and parking areas that are not School property, in or on which public school-related and -sanctioned activities are being performed.
- L. "School volunteer" or "Volunteer" means a person, including a relative of a student, who commits to serve on a regular basis at a school district, charter school or other educational entity without compensation
- M. "Superintendent" means a local superintendent, head administrator of a charter school or regional education cooperative, superintendent or commandant of a special school or head administrator of the educational program of a state agency
- N. "Teacher" means a person who holds a level one, level two or level three-A license and whose primary job is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers
- O. "Terminate" means the act of severing the employment relationship with a school employee
- P. "Unsupervised contact with children or students" means access to or contact with, or the opportunity to have access to or contact with, a child or student for any length of time in the absence of:

1. a licensed staff person from the same school or institution;
  2. a school volunteer who has undergone a background check pursuant to Section 22-10A-5 NMSA 1978; or
  3. any adult relative or guardian of the child or student.
- Q. "Working day" means every school calendar day, excluding Saturdays, Sundays and legal holidays.

## **II. DUTY TO REPORT ETHICAL MISCONDUCT--RESPONSIBILITY TO INVESTIGATE ETHICAL MISCONDUCT--ETHICAL MISCONDUCT REPORT COORDINATION**

- A. School personnel, a school employee, a contractor, or a contractor's employee who knows or has a reasonable suspicion that a child or student has been subject to ethical misconduct by school personnel, a school employee, a school volunteer, a contractor or a contractor's employee shall report the matter immediately to:
  1. the School's Head Administrator or
  2. The Public Education Department.
- B. If a Head Administrator receives a report pursuant to Section II(A), the Head Administrator shall immediately transmit to the PED by telephone the facts of the report and the name, address and telephone number of the reporter. The Head Administrator shall transmit the same information in writing within forty-eight hours.
- C. If PED staff receives a report pursuant to Section II(A), PED staff shall immediately transmit to the Head Administrator by telephone the facts of the report and the name, address and telephone number of the reporter. PED staff shall transmit the same information in writing within forty-eight hours.
- D. A written report shall contain the name, address and age of the child or student; the child's or student's parents, guardians or custodians; the school personnel, school employee, school volunteer, contractor or contractor's employee who is alleged to have committed ethical misconduct; and any evidence of ethical misconduct, including the nature and extent of any injuries and other information that the maker of the report believes might be helpful to investigate a report of ethical misconduct. The written report shall be submitted upon a standardized form developed by the PED.
- E. Upon receipt of a report of ethical misconduct pursuant to II(A), the PED shall immediately notify law enforcement if the allegation of ethical misconduct is criminal in nature; provided that the department shall notify a tribal law enforcement or social services agency for any Indian child residing in Indian country.
- F. The recipient of a report pursuant to Section II(A) shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of a student or child who is the subject of the report. The School shall take immediate steps to ensure the safety of enrolled students.
- G. After a report of suspected ethical misconduct against a student or child is made to a law enforcement agency, the PED or a Head Administrator pursuant to this section, the office receiving the report shall notify the person making the report within five days after the report was made that the office receiving the report is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection.

- H. A law enforcement agency, the PED or a Head Administrator shall have access to any of the records pertaining to an ethical misconduct case maintained by any of the persons enumerated in Subsection A of this section.
- I. The identity of any alleged victims shall be protected to the greatest extent possible in the reporting process. This protection shall include measures such as that the least number of School personnel possible shall be involved in the reporting.
- J. The School shall internally coordinate the reporting and tracking of these incidents of ethical misconduct.

## **II. APPLICANTS FOR SCHOOL EMPLOYMENT, CONTRACTS OR VOLUNTEER POSITIONS--REQUIREMENTS FOR WORK HISTORY AND OTHER INFORMATION**

- A. The School shall require an applicant for employment to provide:
  - 1. A list of the applicant's current and former employers that were schools or that employed the applicant in a position involving unsupervised contact with children or students. The list shall include the name, address, telephone number and other relevant contact information for each of the applicant's listed employers;
  - 2. A written statement describing whether the applicant:
    - a. has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;
    - b. has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or
    - c. has ever had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; and
  - 3. A written authorization that authorizes disclosure of information requested and the release of related records by the applicant's previous employers, releasing the applicant's previous employers from any liability related to the disclosure or release of records.
- B. The School shall conduct a review of the applicant's employment history and contact the applicant's current and former employers listed under Subsection A of this section and request:
  - 1. The applicant's dates of employment; and
  - 2. A written statement describing whether the applicant:
    - a. has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;

- b. has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or
  - c. has ever had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation.
- C. An applicant's current or former employer shall disclose the information requested within thirty days of receiving the request.
- D. During the course of the School's review of the applicant's employment history, an applicant's current or former employer may disclose any other information the applicant's current or former employer deems pertinent and substantive to the prospective employee's suitability for employment in a position that includes unsupervised contact with children or students.
- E. The School shall make and document efforts to:
  - 1. Verify the information provided; and
  - 2. Obtain from an applicant's current or former out-of-state employer the information required.
- F. The School may terminate an individual's employment or contract or rescind an applicant's offer of employment or offer of a contract if the applicant is offered or commences employment with the School after the effective date of this 2021 act and information regarding the applicant's history of child abuse or ethical misconduct that is determined to disqualify the applicant from employment or a contract is subsequently obtained by the public school.
- G. When a reference on a former or current employee, contractor or volunteer is requested, the employer shall respond and provide the requested information.
- H. An applicant who provides false information or willfully neglects to disclose information required under this section shall be subject to discipline including termination or denial of employment or action to deny, suspend or revoke a license.

### **III. CHILD ABUSE--REPORT COORDINATION—CONFIRMATION**

- A. The identity of any alleged victims shall be protected to the greatest extent possible in the reporting process. This protection shall include measures such as that the least number of School personnel possible shall be involved in the reporting.
- B. The School shall internally coordinate the reporting and tracking of these incidents of ethical misconduct.
- C. After a report is made pursuant to Section 32A-4-3 NMSA 1978, the office receiving the notification shall notify the person making the report within five days after the report was made that the office is investigating the matter. Mailing a notice within five days shall constitute compliance with this subsection.

### **IV. SCHOOL DISTRICT PERSONNEL, SCHOOL EMPLOYEES, SCHOOL VOLUNTEERS, CONTRACTORS AND CONTRACTORS' EMPLOYEES--REQUIRED TRAINING PROGRAM.**

- A. All school personnel, school employees, school volunteers, contractors and contractors' employees shall be required to complete training in the detection and reporting of child abuse and neglect, ethical misconduct, professional responsibilities, sexual abuse and assault and substance abuse. Except as otherwise provided in this subsection, this requirement shall be completed within the school personnel, school employee's, school volunteer's, contractor's or contractor's employee's first year of employment.
- B. The PED shall develop or adopt training programs, including training materials and necessary training staff, to meet the requirements of Subsection A of this section to make the training available in every public school. The department shall promulgate rules for the administration of the training programs. The department shall coordinate the development of the programs with appropriate staff in school districts and at public schools, the human services department, the department of health, the early childhood education and care department and the children, youth and families department. The department shall consult with the federal centers for disease control and prevention when developing or adopting the evidence-based training component on child sexual abuse and assault to include methods and materials that have proven to be effective. At a minimum, training required under this section shall include:
  - 1. reporting requirements, including minimal standards triggering reporting;
  - 2. trauma-informed instruction;
  - 3. identification of circumstances and factors that are indicators of likely abuse or inappropriate behaviors;
  - 4. ethical misconduct;
  - 5. professional responsibilities;
  - 6. investigations and procedures; and
  - 7. relevant legal and regulatory definitions.
- C. The training programs developed or adopted pursuant to this section shall be made available by the Department to the deans of every college of education in New Mexico for use in providing such training to students seeking elementary and secondary education licensure.

*Approved by the Coral Community Charter School Governing Council on: June 1, 2021.*