

**TITLE 6            PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 10       PUBLIC SCHOOL ADMINISTRATION - PROCEDURAL REQUIREMENTS**  
**PART 4            DISENROLLMENT WHEN A STUDENT IS NOT LEGALLY ENROLLED IN SCHOOL**

**6.10.4.1            ISSUING AGENCY:** Public Education Department  
[12-31-98; 07-30-99; 6.10.4.1 NMAC - Rn, 6 NMAC 1.5.2.1, 12-29-00; A, 11-13-09]

**6.10.4.2            SCOPE:** This rule applies to local school boards and school districts.  
[12-31-98; 6.10.4.2 NMAC - Rn, 6 NMAC 1.5.2.2, 12-29-00; A, 11-13-09]

**6.10.4.3            STATUTORY AUTHORITY:** This rule is adopted pursuant to Sections 22-2-1 and 22-2-2, NMSA 1978.  
[12-31-98; 6.10.4.3 NMAC - Rn, 6 NMAC 1.5.2.3, 12-29-00; A, 11-13-09]

**6.10.4.4            DURATION:** Permanent  
[12-31-98; 6.10.5.4 NMAC - Rn, 6 NMAC 1.5.2.4, 12-29-00]

**6.10.4.5            EFFECTIVE DATE:** December 31, 1998, unless a later date is cited at the end of a section.  
[12-31-98; 6.10.4.5 NMAC - Rn, 6 NMAC 1.5.2.5, 12-29-00]

**6.10.4.6            OBJECTIVE:** The purpose of this rule is to establish procedures for the disenrollment of students who are not legally enrolled in school.  
[12-31-98; 6.10.4.6 NMAC - Rn, 6 NMAC 1.5.2.6, 12-29-00; A, 11-13-09]

**6.10.4.7            DEFINITIONS:** As used in this rule the following words, terms and phrases shall have the meaning set forth in this paragraph:

- A. "Administrative authority" means the local school district superintendent, a principal or the designee of such person.
- B. "Disenrollment" means discontinuance of the student's attendance at school.
- C. "Enrollment" means registration as a student on the rolls of the local school district.
- D. "Invalid enrollment" refers to an enrolled student or a conditionally enrolled student who has not met the requirements of law for enrollment in school, either as to age, residence, immunization, or other reasons, or has not complied with conditional enrollment requirements.
- E. "Mailed" means deposited in the mail or delivered for transmission by any other means of communication with postage or cost of transmission provided for and addressed to the latest address shown by school records.
- F. "School" means public school.
- G. "School day" means each day of the school year during which the membership of students is computed pursuant to the Public School Finance Act.
- H. "Student" means a "qualified student" eligible to attend public school, as that term is defined in Section 22-8-2, NMSA 1978.  
[12-31-98; 6.10.4.7 NMAC - Rn, 6 NMAC 1.5.2.7, 12-29-00; A, 11-13-09]

**6.10.4.8            LIMITATION ON ENROLLMENT:** Where a student is found to have an invalid enrollment the student shall be disenrolled from school in accordance with the procedure set forth in Section 6.10.4.9 NMAC below.  
[12-31-98; 6.10.4.8 NMAC - Rn, 6 NMAC 1.5.2.8, 12-29-00]

**6.10.4.9            PROCEDURE:** Where the administrative authority has reason to believe a student is enrolled under an invalid enrollment the administrative authority shall take the following action:

- A. Preliminary notice of contemplated action of disenrollment. The administrative authority shall give a preliminary notice of contemplated action of disenrollment to the student, through his/her parent or guardian, of the contemplated disenrollment and the reasons therefore. The preliminary notice shall be in writing, and mailed to the student not later than ten (10) school days before the notice of disenrollment is to be mailed. The preliminary notice shall state that: (1) the student has a right to respond, either in writing or in person, to the administrative authority before the date of the contemplated action of disenrollment, and (2) the student may attempt to resolve the

matter informally by presenting adequate evidence to the administrative authority to refute the alleged reasons for the contemplated action of disenrollment.

B. Stay of proceedings. Where the question of the student's enrollment is under review by an administrative agency in the state of New Mexico or any court of competent jurisdiction, and written documentation has been filed with the administrative authority establishing the pendency of the action, all proceedings under this rule shall be stayed pending final determination of the question by that agency or court.

C. Notice of disenrollment. Where the student has not presented satisfactory evidence to cure the invalid enrollment and has been afforded notice as required by Subsection A of Section 6.10.4.9 NMAC above, the administrative authority shall give written notice to the student, through his/her parent or guardian, that the student will be disenrolled. The notice of disenrollment shall be mailed ten (10) school days after the mailing of the preliminary notice of contemplated action of disenrollment. The notice of disenrollment must include a copy of this rule and must advise the student, through his/her parent or guardian, of the following.

(1) Subject to the procedure in Subsection C, Paragraph (2) of Section 6.10.4.9 below, if satisfactory evidence to refute the alleged reasons for the contemplated action of disenrollment is not submitted to the administrative authority within ten (10) school days from the date of mailing of the notice of disenrollment, the student will be disenrolled.

(2) The student may, at any time within ten (10) school days after the date of mailing of the notice of disenrollment, present the administrative authority with an oral or written request for a hearing on the matter.

(a) The hearing shall be held within five (5) school days after receipt of a request for hearing.

(b) The student may appear at the hearing, with or without counsel, to refute the alleged reasons for the disenrollment.

(c) The student may present witnesses or evidence at the hearing, as well as question any witnesses supporting disenrollment.

(3) Within five (5) school days after the hearing, the hearing officer shall issue and mail to the student, through his/her guardian, the decision setting forth his/her decision and the reasons therefore.

(4) If the hearing officer decides in favor of the student, the matter shall be closed. If the hearing officer decides against the student, the student shall be disenrolled from school five (5) school days from the date of mailing of the decision.

(5) If no request for a hearing is received within the time provided, the student shall be disenrolled from school and shall be permitted to re-enroll only when all legal requirements for enrollment are met.

D. Hearing officer. The administrative authority may designate one or more of its staff to act as hearing officer for disenrollment matters; who, upon referral of the case from the administrative authority, shall follow the procedures set forth herein to afford the student and his/her parent or guardian due process.

E. Hearing procedure. The hearing shall be set within five (5) school days after an oral or written request for hearing is received by the administrative authority.

(1) The administrative authority/hearing officer shall conduct the hearing informally but with dignity, firmness and fairness appropriate to the importance of the proceedings.

(2) Written minutes of the proceedings shall be kept. A verbatim transcript shall not be required.

(3) The hearing shall be conducted to afford the student due process, and shall provide:

(a) an opportunity for the student and his/her parent or guardian to respond at the hearing;

(b) the right to present evidence;

(c) the right to confront adverse witnesses;

(d) the right of cross examination;

(e) the right to be represented by counsel;

(f) the right to have a decision based solely on the applicable legal rules and the evidence presented at the hearing.

(4) Within five (5) school days after the hearing, the hearing officer shall prepare and mail to the student, through his/her parent or guardian, a written decision and the reasons therefore.

[12-31-98; 6.10.4.9 NMAC - Rn, 6 NMAC 1.5.2.9, 12-29-00; A, 11-13-09]

#### **HISTORY OF 6.10.4 NMAC:**

**PRE-NMAC HISTORY:** The material in this regulation is derived from that previously filed with the State Records Center and Archives under: State Board of Education Regulation No. 76-17, Disenrollment Procedure when a Student is not Legally Enrolled in School, filed September 1, 1976; and Amendment 1 to State Board of Education Regulation No. 76-17, Disenrollment Procedure when a Student is not Legally Enrolled in School, filed November 22, 1988.