

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 2 HEALTH SERVICES

6.12.2.1 ISSUING AGENCY: Public Education Department
[6.12.2.1 NMAC - Rp, 6.12.2.1 NMAC, 11-15-05]

6.12.2.2 SCOPE: This regulation applies to children attending public, nonpublic, or home schools in New Mexico unless otherwise expressly limited.
[6.12.2.2 NMAC - Rp, 6.12.2.2 NMAC, 11-15-05]

6.12.2.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Section 22-2-1 NMSA 1978.
[6.12.2.3 NMAC - Rp, 6.12.2.3 NMAC, 11-15-05]

6.12.2.4 DURATION: Permanent
[6.12.2.4 NMAC - Rp, 6.12.2.4 NMAC, 11-15-05]

6.12.2.5 EFFECTIVE DATE: 11-15-05, unless a later date is cited at the end of a section.
[6.12.2.5 NMAC - Rp, 6.12.2.5 NMAC, 11-15-05]

6.12.2.6 OBJECTIVE: This rule addresses health services for children attending schools in New Mexico.
[6.12.2.6 NMAC - Rp, 6.12.2.6 NMAC, 11-15-05]

6.12.2.7 DEFINITIONS: [Reserved]

6.12.2.8 REQUIREMENTS FOR IMMUNIZATION OF CHILDREN ATTENDING PUBLIC, NONPUBLIC, OR HOME SCHOOLS:

A. The following definitions apply to this section.

(1) "Active duty" means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. Sections 1209 and 1211.

(2) "Administrative authority" means the superintendent, principal or the designee of such person.

(3) "Children of military families" means children enrolled in kindergarten through twelfth grade in the household of an active duty member.

(4) "Public health division regulations" means those regulations adopted by the public health division of the department of health pursuant to the authority granted in Sections 24-5-1 to 24-5-6, NMSA 1978 and including the immunization schedule.

(5) "Licensed physician" means a physician licensed to practice medicine or osteopathic medicine in New Mexico, another state or territory.

(6) "Certified nurse practitioner" means an individual licensed as a certified nurse practitioner with prescriptive authority by the New Mexico board of nursing, another state or territory.

(7) "Required immunizations" means those immunizations against diseases deemed to be dangerous to the public health by the public health division and set forth in its immunization schedule effective at date of enrollment.

(8) "Satisfactory evidence of commencement and completion of immunization" means satisfactory evidence of a person having begun the process of immunizations in a statement, certificate or record signed by a duly licensed physician, certified nurse practitioner, or other recognized public or private health facility stating that the person has received at least the first in the series of required immunizations and is proceeding with the immunizations according to the prescribed schedule. Persons enrolling in schools who have begun the process of immunization shall have one month following the date of enrollment to complete the required immunizations and submit satisfactory evidence of completing the required immunizations or having continued the process of the required series.

(9) "Satisfactory evidence of immunization" means a statement, certificate or record signed by a duly licensed physician, certified nurse practitioner, or other recognized, licensed health facility stating that the required immunizations have been administered to the person.

B. No student shall be enrolled in the public, nonpublic, or home schools in the state unless the student can present satisfactory evidence of commencement or completion of immunization in accordance with the immunization schedule and rules and regulations of the public health division.

C. Exemptions from immunization:

(1) The student is exempt from immunization as required by Subsection B of this rule upon filing with the governing authority:

(a) a statement or certificate signed by a licensed physician or certified nurse practitioner stating that the physical condition of the person seeking enrollment is such that immunization would seriously endanger the life or health of the person; or

(b) an exemption granted by the public health division on the basis of:

(i) notarized affidavits or written affirmation from an officer of a recognized religious denomination that such child's parents or guardians are bona fide members of a denomination whose religious teaching requires reliance upon prayer or spiritual means alone for healing; or

(ii) notarized affidavits or written affirmation from his parent or legal guardian that his religious beliefs, held either individually or jointly with others, do not permit the administration of vaccine or other immunizing agent.

(2) Exemptions from obtaining the required immunizations, as listed under Subsection C of 6.12.2.8 NMAC are valid for a period not to exceed nine (9) months and will not extend beyond the end of the school year in which the child is currently enrolled.

D. Children of military families: Children of military families shall be enrolled and conditionally placed in any public, nonpublic or home school to which they are eligible for thirty (30) days while the student obtains the required immunizations. For a series of required immunizations, students of active military families must obtain at least the first in the series of required immunizations within thirty (30) days of the date of enrollment.

E. Disenrollment: If satisfactory evidence of commencement or completion of immunization or an exemption from immunization in accordance with Subsections C and D of 6.12.2.8 NMAC is subsequently determined to be invalid for any reasons and the student is unable to provide either valid satisfactory evidence of commencement or completion of immunization or a valid exemption from immunization in accordance with Subsections C and D of 6.12.2.8 NMAC, the administrative authority shall commence disenrollment proceedings.

F. Administrative duty to report:

(1) It is the duty of each school superintendent, whether of a public or nonpublic school, to cause to be prepared a record showing the required immunization status of every child enrolled in or attending a school under his (her) jurisdiction.

(2) These records must be kept current and available to public health authorities.

(3) The name of any parent or guardian who neglects or refuses to permit his (her) child to be immunized against diseases as required by rules and regulations promulgated by the public health division shall be reported by the school superintendent to the director of the public health division within a reasonable time after such facts become known to the superintendent.

[6.12.2.8 NMAC - Rp, 6.12.2.7, 8, 9, 10 & 11 NMAC, 11-15-05; A, 10-31-11]

6.12.2.9 STUDENT'S RIGHT TO SELF ADMINISTER CERTAIN MEDICATIONS

A. The following definitions apply to this section.

(1) "Health care practitioner" means a person authorized under law in New Mexico to prescribe drugs for the treatment of asthma and anaphylaxis associated medical conditions.

(2) "Medication" means a drug as that term is defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and includes inhaled bronchodilators, inhaled corticosteroids and auto-injectable epinephrine.

(3) "Self-administration" means a student's discretionary use of his or her prescribed asthma or anaphylaxis medication, pursuant to prescription or written direction from a health care practitioner.

B. Requirements

(1) General rights: Schools (whether public or nonpublic) must grant to any student in grades kindergarten through 12 authorization to carry and self-administer health care practitioner prescribed asthma treatment medications and anaphylaxis emergency treatment medication if the following conditions are met:

(a) a health care practitioner has prescribed the medication for use by the student during school hours and instructed the student in the correct and responsible use of the medication; and

(b) the student has demonstrated the skill level necessary to use the medication and any device that is necessary to administer such medication as prescribed by the health care practitioner (or such practitioner's

designee) and the school nurse or other school official who is a public education department licensed health care provider; and

(c) the school nurse (if available) with the health care practitioner formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours; and

(d) the school has, in writing, informed the parent or guardian of the student that the school, including its employees and agents, is to incur no liability as a result of any injury arising from the self-administration of medication pursuant to this section; and

(e) the student's parent or guardian has completed and submitted to the school:

(i) any written documentation required by the school, including the statement required by

Paragraph (1);

(ii) the treatment plan formulated under Subparagraph (c) of this paragraph; and

(iii) a signed statement from the parent or guardian of the student acknowledging that,

notwithstanding any provision of state law to the contrary, the school (including its employees and agents) is to incur no liability as a result of any injury arising from such self-administration of medication and the parent or guardian will indemnify and hold harmless the school (including its employees and agents) against any claim arising out of such self-administration of medication.

(2) Extent of authorization: An authorization granted under Paragraph (1) of Subsection B must allow the student involved to possess and use his/her medication:

(a) while in school;

(b) while at a school-sponsored activity;

(c) during normal before-school and after-school activities such as before-school or after school care on school-operated property; and,

(d) in transit to or from school or school-sponsored activities.

(3) Duration of authorization. An authorization granted under Subsection B:

(a) must be effective only for the school year for which it is granted; and

(b) must be renewed by the parent or guardian each subsequent school year in accordance with

this section.

(4) The school must ensure that back-up medication, if provided by a student's parent or guardian, be kept at the student's school at a location easily accessible to the student in event of an asthma or anaphylaxis emergency. Each school must develop policies and procedures to address the safekeeping of back-up medication in a manner that ensures the medication is easily accessible by the student. Authorized school personnel who in good faith provide a person with backup medication as provided in this paragraph are not liable for civil damages as a result of providing the medication.

(5) Maintenance of information: Information described in Subparagraphs (c) and (e) of Paragraph (1) shall be kept on file at the student's school in a location easily accessible in the event of an asthma or anaphylaxis emergency. Each school must develop policies and procedures to address the safekeeping and confidentiality of the required information.

[6.12.2.9 NMAC - N, 11-15-05]

6.12.2.10 HUMAN IMMUNODEFICIENCY VIRUS (HIV)

A. This section applies to local school boards, local school districts, and charter schools and governs policies to be implemented by local school districts with regards to students and school employees infected with HIV, provides for appropriate curricula regarding HIV, and requires community involvement in the development of policies and the review of instructional materials.

B. Each school district shall implement a policy that will ensure that all students infected with HIV have appropriate access to public education and that their rights to privacy are protected and to further ensure that the rights to privacy of all school employees infected with HIV are protected.

C. Curricula:

(1) Each school district shall provide instruction about HIV and related issues in the curriculum of the required health education content area to all students in the elementary grades, in the middle/junior high school grades, and in the senior high school grades.

(2) Educational materials and grade levels of instruction shall be determined by the local school district and shall be appropriate to the age group being taught.

(3) The instructional program shall include, but not necessarily be limited to:

(a) definition of HIV and acquired immune deficiency syndrome (AIDS);

- (b) the symptoms and prognosis of HIV and AIDS;
- (c) how the virus is spread;
- (d) how the virus is not spread;
- (e) ways to reduce the risks of getting HIV/AIDS, stressing abstinence;
- (f) societal implications for this disease;
- (g) local resources for appropriate medical care; and
- (h) ability to demonstrate refusal skills, overcome peer pressure, and use decision-making

skills.

D. Community involvement. Each local board of education shall insure the involvement of parents, staff; and students in the development of policies and the review of instructional materials.

[6.12.2.10 NMAC - Rp, 6.12.3.8, 9 & 10 NMAC, 11-15-05]

HISTORY OF 6.12.2 NMAC:

PRE-NMAC HISTORY: The material in 6.12.2.8 NMAC is derived from that previously filed with the State Records Center and Archives under: State Board of Education (SBE) Regulation No. 76-16, Immunization Of School Children, filed September 1, 1976; and State Board of Education (SBE) Regulation No. 76-16 (Amendment 1), Immunization Of School Children, filed October 19, 1988. The material in 6.12.2.10 NMAC was derived from that previously filed with the State Records Center and Archives under: State Board of Education (SBE) Regulation No. 87-11, Regulation On Acquired Immune Deficiency Syndrome (AIDS), filed April 13, 1988.

HISTORY OF REPEALED MATERIAL:

The material in 6.12.2.8 NMAC is derived from 6.12.2 NMAC, Immunization of School Children - repealed effective 11-15-05. The material in 6.12.2.10 NMAC is derived from 6.12.3 NMAC, Acquired Immune Deficiency Syndrome (AIDS) - repealed effective 11-15-05.