

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 50 INSURANCE
PART 16 ADMINISTRATIVE APPEAL OF AUTHORITY COVERAGE DETERMINATIONS

6.50.16.1 ISSUING AGENCY: New Mexico Public School Insurance Authority.

[6.50.16.1 NMAC - Rp, 6.50.16.1 NMAC, 09/01/2014]

[The address of the New Mexico Public School Insurance Authority is 410 Old Taos Highway, Santa Fe, New Mexico 87501.]

6.50.16.2 SCOPE: This part applies to all appeals of authority coverage determinations by school districts, charter schools, other educational entities, eligible employees, eligible retired employees, eligible dependents, eligible participating entity governing body members and persons or entities authorized to participate in the authority's programs.

[6.50.16.2 NMAC - Rp, 6.50.16.2 NMAC, 09/01/2014]

6.50.16.3 STATUTORY AUTHORITY: Subsection D of Section 22-29-7 NMSA 1978, directs the authority to promulgate necessary rules, regulations and procedures for the implementation of the New Mexico Public School Insurance Authority Act, Section 22-29-1 et seq. NMSA 1978.

[6.50.16.3 NMAC - Rp, 6.50.16.3 NMAC, 09/01/2014]

6.50.16.4 DURATION: Permanent.

[6.50.16.4 NMAC - Rp, 6.50.16.4 NMAC, 09/01/2014]

6.50.16.5 EFFECTIVE DATE: September 1, 2014 unless a later date is cited at the end of a section.

[6.50.16.5 NMAC - Rp, 6.50.16.5 NMAC, 09/01/2014]

6.50.16.6 OBJECTIVE: The objective of this rule is to clarify the relationship between the authority and its members and to establish a fair and uniform procedure for school districts, charter schools, other educational entities, eligible employees, eligible retired employees, eligible dependents, eligible participating entity governing body members and persons or entities authorized to participate in the authority's programs to appeal authority coverage determinations.

[6.50.16.6 NMAC - Rp, 6.50.16.6 NMAC, 09/01/2014]

6.50.16.7 DEFINITIONS: As used in this rule:

A. "Authority" means the New Mexico public school insurance authority or its authorized representatives.

B. "Authority board" or "board" means the board of directors of the New Mexico public school insurance authority.

C. "Appellant" means any party who complains that a coverage determination may be in violation of any law, rule, regulation, or order administered or promulgated by the authority and who initiates a proceeding under this rule by filing a petition for review with the authority.

D. "Coverage determination" and "determination" mean any decision, order or disposition by the authority denying coverage, limiting the scope of coverage or limiting the amount of payment of a claim of a member or employee, except for workman's compensation claims.

E. "Document" means, except as otherwise used in the provisions of this rule governing discovery, any written submission in a formal proceeding which is not a pleading or which is required to be filed by authority rule or order outside a formal pleading; this includes items such as reports, exhibits, and studies; at the option of the party or staff making a filing, any document may additionally be presented in a form the hearing officer so orders.

F. "Employee" means a person employed by a member school district, charter school or other educational entity, or an employee's representatives in the event of legal incapacity, and includes volunteers or officials entitled to authority liability coverage pursuant to the Tort Claims Act, Subsection F of Section 41-4-3 NMSA 1978.

G. "Final coverage determination by the authority" with respect to a member means a coverage letter from the authority's contracted general counsel or contracted claims adjuster or with respect to an employee means a coverage letter from the authority's contracted third party benefits administrator or authorized authority staff member.

H. “Hearing” means any proceeding that is noticed for “hearing” by the authority or hearing officer and shall include an opportunity for the parties to present such evidence, argument, or other appropriate matters as the presiding officer shall deem relevant and material to the issues; hearings may be conducted by telephone conference call at the discretion of the presiding officer.

I. “Hearing officer” means a person appointed by the authority as a hearing examiner, who is designated by the authority to conduct any hearing or investigation which the authority is authorized to conduct, to take testimony in respect to the subject under investigation, report such testimony and provide to the authority a proposed decision with regard to the issues.

J. “Member school districts, charter schools and other participating entities” herein referred to collectively as “members” means all public school districts and charter schools mandated by the act to be members of the authority and all other educational entities voluntarily participating in the authority.

K. “Party” means any person or entity that initiates or responds to an authority proceeding by filing a petition for review with the authority and includes the authority; unless the context indicates otherwise, the term “party” may also refer to counsel of record for the party.
[6.50.16.7 NMAC - Rp, 6.50.16.7 NMAC, 09/01/2014]

6.50.16.8 RELATIONSHIP BETWEEN THE AUTHORITY, ITS MEMBERS AND COVERED EMPLOYEES: These findings and policy considerations guide the authority in adopting the following regulations and providing a procedure for administrative appeal of authority coverage determinations:

A. The authority is an agency of the state of New Mexico and is endowed only with those powers and duties stated in the New Mexico Public School Insurance Authority Act, Section 22-29-1 et seq. NMSA 1978 (“act”). The relationship between the authority and its members or employees, and any coverage provided by the authority to them, is defined and constrained by the act and by authority rules, regulations and procedures lawfully promulgated under the act.

B. The members of the authority participate pursuant to Section 22-29-9, NMSA 1978 of the act, which provides that school districts and charter schools shall participate in the authority unless they are granted a waiver of participation pursuant to the procedures provided in that section of the act. Section 22-2-9 NMSA 1978 also provides that other educational entities may participate in the authority.

C. The act does not empower the authority to contract with its members or employees. There is no relationship between the authority and its members or employees based upon or arising out of any contract between the authority and its members or employees.

D. The insurance protection provided by the authority to its members is provided either by insurance policies contracted through private insurers or through the statutory self-insurance program administered by the authority.

E. For the benefit of the authority and its members and their employees, the following regulations provide a formal procedure for members and employees to appeal authority coverage determinations. Therefore, the following procedures for appeal from any coverage determination or ruling of the authority are provided as the exclusive remedy for any person or entity challenging a coverage determination of the authority.

[6.50.16.8 NMAC - Rp, 6.50.16.8 NMAC, 09/01/2014]

6.50.16.9 PROCEDURE FOR APPEAL OF A FINAL COVERAGE DETERMINATION OF THE AUTHORITY: An aggrieved member or employee may appeal any final coverage determination of the authority by following the procedures specified herein. Review of any final decision or order of the authority can only be sought as provided by statute or by rules promulgated by the supreme court for appeal of state agency decisions.

[6.50.16.9 NMAC - Rp, 6.50.16.9 NMAC, 09/01/2014]

6.50.16.10 PETITION FOR REVIEW: Every appeal of a coverage determination of the authority shall be initiated by mailing a petition for review, within 30 days of the mailing date of the determination, to the executive director of the New Mexico Public School Insurance authority by certified mail.

A. A petition for review must specify and include:

(1) the name of the employee or member appealing, and, for institutional parties, the name, position, address and phone number of a person who will be responsible for receiving communications from the authority;

(2) a full description of the coverage determination being appealed, including the date of the determination and, specifically, the substance of the determination that is being appealed;

(3) a short, concise statement of the grounds for the appeal;

(4) if the authority determination is in a writing, a copy of the writing must be attached to the notice;

(5) copies of all documents, photographs or other tangible evidence that appellant contends provides support for appellant's position; and

(6) a memorandum stating the complete argument for overturning the determination of the authority, including a statement of relevant facts, an outline of controlling law, and the appellant's argument.

B. An extension of up to 14 days to provide the items specified in Paragraphs (5) and (6) of Subsection A of 6.50.16.10 NMAC may be granted at the discretion of the authority upon written request of the appellant.

[6.50.16.10 NMAC - Rp, 6.50.16.10 NMAC, 09/01/2014]

6.50.16.11 FINAL DECISION OF THE AUTHORITY BASED ON PETITION FOR REVIEW:

A. Within 30 days following receipt of the completed petition for review, including all supporting documents, the board shall either:

(1) issue a final decision vacating or modifying the coverage determination of the authority consistent with appellant's argument; or

(2) issue a notice of hearing setting, such hearing to be held no less than 30 days and no more than 45 days after the date the notice of setting is mailed to appellant.

B. Either the final decision in conformity with appellant's argument or the notice of hearing setting shall be mailed to appellant by first-class mail. A notice of hearing setting shall specify the date, time, location and subject matter of the hearing.

[6.50.16.11 NMAC - Rp, 6.50.16.11 NMAC, 09/01/2014]

6.50.16.12 SETTLEMENT OF APPEAL: The appellant and the authority may, at any time, either prior to or during a proceeding under this rule, informally settle a dispute by the consent of the parties.

[6.50.16.12 NMAC - Rp, 6.50.16.12 NMAC, 09/01/2014]

6.50.16.13 PRE-HEARING PROCEDURE:

A. Hearing officer. The board shall appoint a hearing officer for an appeal within 7 days after mailing the notice of setting. The board shall provide appropriate clerical support and space for any hearings conducted. Venue for any hearings shall be Santa Fe county unless the hearing officer in view of convenience to parties and witnesses orders that another location is more appropriate. The hearing officer shall oversee all proceedings after the hearing is set. The hearing officer will also provide written findings of fact and a disposition recommendation to the board within 14 days after completion of a hearing. The board shall make a final decision, after review of the recommendations of the hearing officer, and mail a notice of final decision to appellant within 30 days of receipt of the hearing officer's recommendations.

B. Representation of parties:

(1) The authority shall be represented in proceedings under this rule by its general counsel or a staff member of the authority appointed by the executive director for this purpose.

(2) The appellant may appear pro se, if appellant is an individual, or by an administrator of an institutional appellant who has been appointed for that purpose by the governing body of the institution. Any appellant may be represented by legal counsel licensed to practice law in the state of New Mexico.

C. Production of authority documents:

(1) Should a hearing be set by the board, the authority shall make available for copying and inspection all documents that the authority determines to be relevant to the initial determination being appealed within seven days of the date the hearing setting is issued. "Relevance," in this context is to be construed liberally in favor of production.

(2) Documents may be withheld or redacted by the authority only when the relevant material is protected from disclosure or otherwise privileged under New Mexico law. In the interest of complete disclosure, redaction shall be favored over withholding the document.

(3) Should any documents be withheld pursuant to New Mexico law, a list or privilege log generally identifying each document, its contents and the claimed privilege shall be provided to the appellant at the time of production.

(4) Documents produced shall be made available for inspection and copying at the offices of the authority.

D. Production of appellant or other party documents: The hearing officer for good cause shown may order inspection, production and copying of documents deemed relevant that are in the possession, custody or control of the appellant member, employee or other party.

E. Authority, appellant, member and employee arguments: At least 14 days before the date set for the hearing, all parties shall file simultaneously memorandums stating their complete arguments for or against the authority determination, including a statement of relevant facts, an outline of controlling law and the relief requested. Each party must mail or deliver the original memorandum and one copy to the hearing officer and one copy to the representative of each other party.

F. Witness and exhibit lists: Each party must file witness and exhibit lists at least 14 days before the date set for the hearing by mailing or delivering the original to the hearing officer and one copy to the representative of each other party. Witnesses must be identified with particularity. The party calling a witness must provide the witness's name and address and must describe the subject matter of the testimony expected to be elicited from each witness. Each document or object identified in the exhibit list must be immediately made available for inspection and copying. Only witnesses properly identified in the witness list will be permitted to testify in the hearing and only exhibits properly identified in the exhibit list will be admissible in the hearing unless upon good cause being shown the hearing officer determines otherwise.

[6.50.16.13 NMAC - Rp, 6.50.16.13 NMAC, 09/01/2014]

6.50.16.14 HEARINGS:

A. Rights of parties and those offering comment. At any hearing, all parties shall be entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the hearing. Non-parties wishing to make comments shall be entitled to make an oral or written statement for the record but such statement shall not be considered as evidence. Non-parties making comment shall not have the right to introduce evidence or examine or cross-examine witnesses, to receive copies of pleadings or documents, to appeal from any decision or order, or to otherwise participate in the hearing other than by making their comments.

B. Continuance. Any party who desires a continuance shall request a continuance immediately upon receipt of notice of hearing or as soon thereafter as facts requiring such continuance come to the party's knowledge. The hearing officer may grant a request for continuance if timely made and supported by reasonable cause. The hearing officer may also grant a continuance at any time in the hearing officer's sound discretion.

C. Order of presentation. The hearing officer shall determine the order of presentation of the evidence and shall be guided in this matter by the interests of fairness and justice.

D. Rules of evidence.

(1) All relevant evidence is admissible which, in the opinion of the hearing officer, is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability and trustworthiness.

(2) In passing upon the admissibility of evidence, the hearing officer shall give consideration to, but shall not be bound by, the New Mexico rules of evidence which govern proceedings in New Mexico district courts. The hearing officer shall also give consideration to the legal requirement that any final decision on the merits be supported by competent evidence.

(3) All testimony to be considered as evidence in a hearing shall be made under oath.

(4) The parties may agree to submit written stipulations of fact or law or both to the hearing officer and such stipulations shall be binding upon the parties entering into the stipulation.

(5) A hearing officer may take administrative notice of the following matters if otherwise admissible under this rule: rules, regulations and procedures of the authority and other government agencies; decisions, records and transcripts in other authority proceedings; state and federal statutes; decisions of state and federal courts; and matters of which the courts of this state may take judicial notice. Matters noticed are admitted into evidence to the same extent as other relevant evidence.

E. Proposed findings. The hearing officer may require all parties of record to file proposed forms of order, including proposed findings of fact and conclusions of law, at the close of testimony in the proceeding.

[6.50.16.14 NMAC - Rp, 6.50.16.14 NMAC, 09/01/2014]

6.50.16.15 CONFLICTS: If an employee or official of an aggrieved member is on the authority board, that authority board member shall abstain from any participation, discussion, action or voting with respect to the petition for review. In the event an aggrieved authority employee files a petition for review he or she shall abstain from any participation, discussion, action or communication with regard to the petition other than in his or her normal role as a petitioner.

[6.50.16.15 NMAC - Rp, 6.50.16.15 NMAC, 09/01/2014]

6.50.16.16 PROCEDURE FOR REVIEW OF A FINAL DECISION OF THE AUTHORITY: Final decisions of the authority, whether based upon a notice of appeal or the written findings of fact and disposition recommendations of a hearing officer, may be reviewed in the New Mexico district courts pursuant to the provisions of Rule 1-075 of the Rules of Civil Procedure for the district courts, governing issuance of writs of certiorari for constitutional review of agency decisions. It is important that an appellant wishing to seek district court review of a final decision of the authority immediately examine the most recent publication of Rule 1-075 to determine its requirements. Pursuant to Rule 1-075, a petition for writ of certiorari must be filed in the district court within 30 days after the date of the final decision of the authority.
[6.50.16.16 NMAC-Rp, 6.50.16.16 NMAC, 09/01/2014]

HISTORY of 6.50.16 NMAC:

History of Repealed Material:

6.50.16 NMAC, Administrative Appeal of Authority Coverage Determinations, filed 6/16/2000 - Repealed effective 09/01/2014.