

**TITLE 8 SOCIAL SERVICES**  
**CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS**  
**PART 430 RECIPIENT POLICIES - REQUIREMENTS FOR DEPENDENT CHILDREN**

**8.106.430.1 ISSUING AGENCY:** New Mexico Human Services Department.  
[8.106.430.1 NMAC - N, 07/01/2004]

**8.106.430.2 SCOPE:** The rule applies to the general public.  
[8.106.430.2 NMAC - N, 07/01/2004]

**8.106.430.3 STATUTORY AUTHORITY:** New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state.  
[8.106.430.3 NMAC - N, 07/01/2004]

**8.106.430.4 DURATION:** Permanent.  
[8.106.430.4 NMAC - N, 07/01/2004]

**8.106.430.5 EFFECTIVE DATE:** July 1, 2004, unless a later date is cited at the end of a section.  
[8.106.430.5 NMAC - N, 07/01/2004]

**8.106.430.6 OBJECTIVE:**

**A.** The objective of general assistance is to provide financial assistance to dependent needy children and disabled adults who are not eligible for assistance under a federally matched financial assistance program such as New Mexico works (NMW) or the federal program of supplemental security income (SSI).

**B.** The objective of the supplement for residential care program is to provide a cash assistance supplement to SSI recipients who reside in licensed adult residential care homes.

**C.** The objective of the burial assistance program is to assist in payment of burial expenses for an individual who was a low income individual at the time of death.  
[8.106.430.6 NMAC - N, 07/01/2004]

**8.106.430.7 DEFINITIONS:** [Reserved]  
[8.106.430.7 NMAC - N, 07/01/2004]

**8.106.430.8 AGE - DEPENDENT CHILDREN:** To be eligible for inclusion in the GA dependent child benefit group with respect to age, a dependent child is defined as an individual who is;

**A.** seventeen years of age or younger;

**B.** eighteen years of age and enrolled in high school; or

**C.** between eighteen and twenty-two years of age and receiving special education services regulated by the public education department (PED).

[8.106.430.8 NMAC - N, 07/01/2004]

**8.106.430.9 SCHOOL ATTENDANCE:**

**A. Requirement:** A child of school age, as defined by PED, must attend school and have satisfactory attendance to meet the personal responsibility requirements of the parent, specified relative, or caretaker.

**B. Student status:**

(1) A dependent child of school age must be a full-time student at a certified educational facility or participating and fully complying with a home-schooling program approved by the New Mexico PED. School age means any dependent child who turns six years of age prior to September first and is under 18 years of age.

(2) A participant who is 18 years of age may be included in the NMW benefit group if the individual is enrolled in high school, or the high school equivalent level of vocational or technical training. Such an individual may be eligible to be included in the NMW benefit group until the end of the month in which the individual graduates or until the end of the month in which the individual turns 19 years of age, whichever occurs first.

(3) A student who is between 18 and 21 years of age may be included in the NMW benefit group as

long as the student is enrolled in high school and is receiving special education services regulated by the PED. There must be a current valid individual education plan (IEP) for the student to verify the special education services.

(4) A dependent child age 17 years of age or younger who has graduated from high school or has obtained a GED shall be deemed to be a full-time student and to fulfill attendance requirements.

(5) A minor unmarried parent who does not have a child under the age of 12 weeks, must attend school full time to obtain a high school diploma or must participate in a GED program full-time or participate in approved alternate schooling unless the minor unmarried parent has already graduated from high school or obtained a GED.

**C. School attendance:**

(1) **Full time attendance:** A child is considered a full-time student based on the below criteria:

(a) School attendance is defined by the standards of the educational facility or program in which the child is enrolled including regularly scheduled vacations and breaks provided the child:

(i) has not been removed for non attendance; and

(ii) resumes attendance when classes start again;

(b) is currently enrolled in a home schooling programming approved by the New Mexico PED.

(2) **Verification:**

(a) Verification of school attendance must be provided at time application and certification for any:

(i) minor unmarried parent; and

(ii) dependent child 18 years of age and over.

(b) The statement of the parent or caretaker is acceptable verification of school attendance for all other dependent children, unless otherwise questionable.

**D. Unsatisfactory attendance:**

(1) A child shall be considered not meeting the school attendance requirement when the child:

(a) is not enrolled in school;

(b) has accumulated three unexcused absences in a grading period, but not on the same day;

(c) has dropped out of school during the current grading period; or

(d) has one or more unexcused absences during the time period covered by a current school attendance plan.

(2) **Reporting requirement:** Within 14 days of the date it becomes known, the parent, specified relative, or caretaker must report to ISD if a child is not enrolled in school, has accumulated three unexcused absences during the current grading period, or has dropped out of school. Failure to report that a child has not met school attendance requirements shall not result in a non-reporting sanction for the parent, or the specified relative or caretaker if included in the benefit group.

(3) **Failure to meet:** In the absence of good cause for failure to meet the school attendance requirements the conciliation process shall be initiated.

(a) **Conciliation process:** Prior to removing the child's needs from the benefit group's standard of need, the parent, specified relative or caretaker shall have a 10 working day conciliation period to address school non-attendance. The conciliation period is a 10 working day period affording an opportunity for the parent, child, and the school to develop a plan to ensure regular attendance by the child and comply with NMW requirements.

(i) Within 10 days of receipt of verification that a child has not met school attendance requirements, the caseworker shall take action to initiate a conciliation period by issuing a notice of action.

(ii) The benefit group shall have 10 working days from the date of issuance of the notice to provide a school attendance plan indicating the school's confirmation of satisfactory arrangements.

(iii) If a benefit group fails to provide a school attendance plan, a notice of adverse action shall be sent within five working days.

(iv) If the school confirms that satisfactory arrangements have been made to ensure regular attendance by the child, the child shall remain eligible.

(b) **Benefit reduction:**

(i) The child shall be removed from the benefit group effective the month following the month the notice of adverse action expires.

(ii) If there is one or more unexcused absence following successful submission of a school attendance plan (the school's confirmation of satisfactory arrangements), the caseworker shall remove the child from the benefit group effective the month following the month the notice of adverse action expires.

(c) **Case closure:** If the child is the only child included in the benefit group, the cash

assistance case shall be subject to closure in the month following the notice of adverse action.

**(4) Good cause:** A child with unsatisfactory school attendance or enrollment shall be warranted good cause based on the following circumstances:

- (a) periods of personal illness or convalescence;
- (b) family emergencies, for a period not to exceed 30 days;
- (c) participation in or attendance at cultural and religious activities as long as the child has parental consent; or
- (d) a minor parent has a child under 12 weeks of age.

**E. Regaining eligibility:** Once a child has been removed from the benefit group due to failure to comply with school attendance requirements, the child can not be considered a member of any benefit group. Changes in school attendance must be reported by the parent/caretaker. Eligibility may be regained when:

- (1) the child has attended school with no unexcused absences for the 30 days;
- (2) circumstances of good cause apply as listed in Paragraph (4) of Subsection D; or
- (3) during the summer months if the child is promoted, attending summer school or graduating.

[8.106.430.9 NMAC - N, 07/01/2004; A, 02/27/2009]

### **8.106.430.10 CHILD SUPPORT ENFORCEMENT**

**A. Assignment of support rights:** A caretaker who receives cash assistance for an unrelated dependent child, whether or not the caretaker is included in the benefit group, automatically assigns to HSD the right to child support for any individual included in the benefit group. The assignment shall be:

- (1) effective with respect to any dependent child included in the benefit group;
- (2) valid as long as the caretaker receives GA payments on the child's behalf; and
- (3) includes any child support amount for which the caretaker is or may become eligible on behalf of any dependent child included in the benefit group.

**B. Cooperation:**

(1) The caretaker who is responsible for each child included in the benefit group must cooperate with the child support enforcement division (CSED) in obtaining child support. The caretaker shall be required to cooperate regardless of whether the caretaker is included in the benefit group.

(2) Failure to cooperate with a child support enforcement requirement will result in payment reduction through the sanction process.

(3) Failure to cooperate shall result in the personal ineligibility of the caretaker if the caretaker is included in the GA benefit group, and in a payment sanction against the benefit group, as described in 8.106.620.10 NMAC.

(4) The caretaker must turn over to CSED any child support payment which the caretaker receives directly from a noncustodial parent of the unrelated dependent child.

**C. Determining that cooperation exists:**

(1) A caretaker who signs an application or other applicable child support-related forms, on behalf of an unrelated dependent child indicates an understanding of the requirement to assign support rights to the department.

(2) The caretaker shall be considered to have met the cooperation requirement until such time as CSED reports to the caseworker that the caretaker has failed to cooperate.

(3) The determination whether the caretaker has cooperated with CSED shall be made by CSED based on CSED requirements.

(4) The cooperation requirement may be partially or fully waived by CSED upon demonstration of good cause by the caretaker.

**D. Action upon receiving notice of noncompliance:** Within ten days after notification by CSED of the failure of a caretaker to cooperate, the caseworker shall take action that is appropriate to the status of the case, including:

(1) issuing a conciliation notice that allows a period of time for the caretaker to cooperate and avoid payment reduction ; or

(2) removing the needs of the dependent child from the cash assistance payment; and

(3) imposing a noncompliance sanction, in cases where the caretaker is included in the benefit group;

(4) in a cases where the dependent child is the only benefit group member, GA benefits shall be terminated upon a determination that the caretaker has failed to cooperate with the assignment of rights to child support.

**E. Good cause:**

(1) In some situations, it is not in the best interests of the child or caretaker to pursue support or to require that the caretaker cooperate with CSED in pursuing such support. A caretaker shall be:

- (a) notified that the requirement to cooperate may be waived,
- (b) informed of the requirements involved in the waiver, and
- (c) given an opportunity to request a waiver that would exempt the caretaker from the cooperation requirement.

(2) If a caretaker requests a waiver of the cooperation requirement, assistance shall not be delayed pending determination of good cause, nor may enforcement of support begin or continue while the waiver of the requirement is under consideration.

(3) **Granting a good cause exemption:** The decision whether to grant a good cause exemption shall be made according to the following:

(a) **ISD-domestic violence exemption:** ISD shall exempt a caretaker from CSED cooperation requirements where a trained counselor, such as a domestic violence counselor or social worker, has certified that cooperation would make it more difficult to escape a domestic violence situation involving a parent of the dependent child, or would unfairly penalize the caretaker or child in light of current circumstances.

(b) **CSED-other good cause exemptions:** All other good cause exemptions from cooperation with CSED requirements shall be made by the director of the CSED or designee.

(4) **Notification:** The caseworker shall send a caretaker a written notice when a waiver has been granted due to domestic violence.

(a) The caretaker shall be informed whether CSED has determined that support can be pursued without danger or risk to the caretaker or child. If pursuit is planned, the caretaker shall be notified that he or she must cooperate to the extent of providing necessary information and documents and that, if the caretaker does not comply to the extent possible, a noncompliance sanction will be imposed or benefits will be terminated.

(b) A caretaker shall be notified of the right to a fair hearing, and that the caretaker may ask for such a hearing within 90 days of the date on the written notice.

(c) If CSED determines that good cause does not exist, the caseworker shall notify the caretaker within 10 working days that:

- (i) the request has been denied;
- (ii) the caretaker is expected to cooperate fully in pursuing support; and
- (iii) the caretaker may request an administrative hearing, but that the caretaker is

expected to begin cooperating within ten days after the date of the notice.

[8.106.430.10 NMAC - N, 07/01/2004]

**History of 8.106.430 NMAC:** [RESERVED]