

# POLICY SERVICES ADVISORY

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### Policy Advisory Discussion

**Policy Advisory No. 215. JFB – Open Enrollment.** Senate Bill 272 requires that NMSA 22-1-4 regarding open enrollment be modified to allow military families to enroll school-age children prior to their physical presence in the state under the first enrollment priority.

For those not familiar with why policy JFB (Open Enrollment) appears to be very complex, the following explanation is provided. Any application, reference to handicap condition or selection for open enrollment based upon a

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student's qualification for Special Education Services or Section 504 modifications would be a discriminatory act in violation of federal law on non-discrimination and equal opportunity in relation to disability as found in policy AC (Non-discrimination / Equal Opportunity). Students with disabilities under federal law are to be considered by grade level educational placement and not by disability, though special provisions for disability may be required. To avoid that circumstance, Policy Services has prepared a policy which places all resident and non-resident students (priorities being considered) within grade level groups and to be admitted upon the use of a random selection process. Contrary to what some may understand, a student may not be omitted from open enrollment simply because the district does not have a program to accommodate their disability. Considering the federal non-discrimination position and the open enrollment statute, the limits as to when applications can be made along with the random selection process in the suggested policy allows for some management of admission. The randomness of the policy ensures that a district with notable services in certain areas is not targeted by parents because of the service. Under the random selection process of the suggested policy there would be no opportunity for discrimination to take place. Also note that the policy includes the opportunity for students to enroll outside of the open enrollment period if there is still room based upon the availability of capacity.

Many districts have chosen to use a local open enrollment policy. Policy Services would caution against such action because it is likely that this will be challenged given the knowledge and perseverance of parents of student's with disabilities and their advocates. If these issues are not of concern to the district, a local policy can be established and maintained. Keep in mind, if a student is attending the district under open enrollment, the district must provide the special services necessary under the requirements of special education and Section 504.

The only changes to the model policy JFB are in the area of military family allowances per Senate Bill 272 and omission of a legal citation that has been repealed. Both Regulation JFB-R and Exhibit JFB-E have no changes but are required for the implementation of the policy. For those adopting this advisory, please consider the dates highlighted in the Section titled Information and Application on when applications are accepted and provide those along with the date of adoption upon approval by your Local Board of Education.

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**Policy Advisory No. 216. IHB, IHB-E – Special Instructional Programs.** House Bill 222 titled the Special Education Ombud Act places a requirement on school districts to post and distribute information regarding the new Ombud Act. Policy Services has provided the policy guidance for this requirement in both the policy and in the exhibit.

The policy IHB was originally developed several years ago following the Special Education Bureau posting requirements for school districts to modify and adopt an on-line model set of special education requirements. With the Bureau's approval, Policy Services referenced the Bureau's on-line model as modified by the local school district, a large document, rather than adding to the also large policy manual. The policy IHB is, in general, a summary document, outlining only minimal requirements of the Federal Act. The last paragraph of the policy references the State required document. The exhibit IHB-E contains the Federal Regulations at 34 C.F.R. 300.504 on Procedural Safeguards notice. The Ombud Act compliance information is contained as a heading following the Procedural Safeguards.

What districts should remember and take action to implement are the following directions required by the act:

- Post a notice regarding the "Ombud Act" containing a description of services, name, address and phone number of the office in a conspicuous location and on the school website (form to be approved by the Ombud Act office) as well as:
  - Distribute information regarding the state Ombud Act every school year.
  - Provide information as a part of the annual individual education plan process prior to each year's plan meeting.

Since the Ombud Act has not been codified (given a statutory numerical designation) by the New Mexico Compilation Commission at the time this advisory was written, the designation and link will be added to each policy upon adoption and submission to each district's on-line policy manual.

**Policy Advisory No. 217. BID – Board Member Compensation and Expenses.** The changes to 10-8-3 and 10-8-4 by Senate Bill 345 relate to a new definition of attendance applying to Board members of a local public body, public officers or public officials who are appointed by a local public body and employees of the local public body. Non-salaried public officers or

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officials, which include Board members and those public officials appointed by the Board as defined in revised NMSA 10-8-3, are to be reimbursed for per diem and mileage rates per NMSA 10-8-4 as revised.

In accord with 6.20.2.19 NMAC each school district is instructed to establish and implement written policies and procedures for travel and training. Travel policies and procedures shall be in compliance with the Per Diem and Mileage Act, Sections 10-8-1 through 10-8-8, NMSA 1978, and department of finance and administration (DFA) regulations. To include all the requirements of 10-8 and the DFA regulations would entail inclusion of regulations that change almost yearly and are already provided in a Manual of Procedures titled PSAB Supplement 20 Training and Travel. Policy Services has chosen to highlight the requirements with references linked to the actual Statutes 10-8-1 through 10-8-8 and the Manual of Procedures titled PSAB Supplement 20 Training and Travel.

The changes to 10-8-3 and 10-8-4 by Senate Bill 345 relate to a new definition of attendance applying to Board members of a local public body, public officers or public officials who are appointed by a local public body and employees of the local public body. Non-salaried public officers or officials, which include Board members and those public officials appointed by the Board as defined in revised NMSA 10-8-3, are to be reimbursed for per diem and mileage rates per NMSA 10-8-4 as revised.

The significant changes are that a Board member, Public Officer or Public Official who attends a board or committee meeting for less than four (4) hours or a virtual meeting of any duration during a single calendar day, shall receive a per diem of forty-five dollars (\$45). If the officer physically attends a board or committee meeting for four (4) hours or more during a single calendar day they shall receive a per diem of ninety-five (\$95) dollars. At this point the statute indicates that mileage rate reimbursements are to be in accord with the Internal Revenue Service standard rate set January 1 of the previous year for miles traveled in a privately owned vehicle or eighty-eight cents (\$.88) in a privately owned airplane under certain conditions cited in NMSA 10-8-4 D. Thereafter, the statute indicates that reimbursement for actual meals and incidentals shall not exceed the maximum amounts for in-state and out-of-state travel established by the Department of Finance and Administration (DFA). The travel mileage is always subject to being calculated from the post of the Officer, Official or employee. The post of a Board Member is always their home while that of an employee is their assigned station.

That having been the general changes of the two statutory sections, the policies will simply state these factors with a linked reference to the statutes and regulations as being a part of the policy by such reference. It is suggested that the business office or other office responsible for approval of travel in each district maintain copies of the latest versions of the statutes and regulations and make them available to Public Officers, Officials, and staff.

**Policy Advisory No. 218. DKC – Expense Authorization and Expenses.** The following explanation is similar to the previous explanation for Board members in Policy Advisory No. 217. The difference is that there are definitions changed by Senate Bill 345 that apply in policy BID that do not apply in policy DKC. Certain changes regarding meals and lodging have changed for both of these policies.

In accord with 6.20.2.19 NMAC, each school district shall establish and implement written policies and procedures for travel and training. Travel policies and procedures shall be in compliance with the Per Diem and Mileage Act, Sections 10-8-1 through 10-8-8, NMSA 1978, and department of finance and administration (DFA) regulations. To include all the requirements of 10-8 and the DFA regulations would entail inclusion of regulations that change almost yearly and are already provided in a Manual of Procedures titled PSAB Supplement 20 Training and Travel. Policy Services has chosen to highlight the requirements with references linked to the actual Statutes 10-8-1 through 10-8-8 and Manual of Procedures titled PSAB Supplement 20 Training and Travel.

Statute indicates that mileage rate reimbursements are to be in accord with the Internal Revenue Service standard rate set January 1 of the previous year for miles traveled in a privately owned vehicle or eighty-eight cents (\$.88) in a privately owned airplane under certain conditions cited in NMSA 10-8-4 D. Thereafter, the statute indicates that reimbursement for actual meals and incidentals shall not exceed the maximum amounts for in-state and out-of-state travel established by the Department of Finance and Administration (DFA). The policies will simply state these factors with a linked reference to the statutes and regulations and that all are part of the policy by such reference. It is suggested that the business office or other office responsible for approval of travel in each district maintain copies of the latest versions of the statutes and regulations and make them available to Public Officers, Officials, and staff.

**Policy Advisory No. 219. JLCA – Physical Examinations of Students.** House Bill 308, **passed by the legislature in 2019**, required the preparation of rules by the Public Education Department (PED) to implement a requirement for dental examinations for all new enrollees in the New Mexico schools after July 1, 2021. The policy provides the basic information of the Statute and Rule. There are some parts of the implementation that will require other actions by the districts.

Keep in mind that the collection of satisfactory evidence of dental examination or the waiver is for the initial registration of the student in a New Mexico school or district. It is not required for continuing students after first time enrollment. Thus, this information will have to be forwarded to other schools when a student transfers, otherwise there will be confusion regarding this issue from school to school.

The rules provide an exception for an informed opt-out process based on parent or guardian understanding of the risks associated with not having a dental examination. The department is to provide extensive education statewide for parents and guardians explaining the requirements for dental examination and providing information regarding where they may receive referrals to dental health care professionals statewide who are authorized to perform dental examinations in accordance with those rules.

The statute requires satisfactory evidence and a form signed by the parent or guardian that the risk is understood and that the parents opt not to obtain the dental examination. The rule, on the other hand, requires that the districts have the parents sign a "student dental examination waiver" which is to be a **designated field within a school district's enrollment application**. This addition to the statutory requirement is logical because of the issue of transfers among districts and even schools within a district. The rule also requires that the information be collected, stored and reported for newly enrolled students only with the end of year student data by enrolled 'with evidence' or enrolled 'with waiver opted.' The enrollment application requirement may require extensive changes to the enrollment forms and procedures which schools have systemized and many have placed on line. There may also be difficulty and additional time required to retrieve information from a larger document than a separate standard form. Policy services suggests that this is something the school nurse should accumulate from the records.

**Be prepared to hand out information and refuse enrollment of a student who is enrolling in a New Mexico school for the first time based upon this new law. It may cause additional work and financial concern in follow up and lost days of student attendance.**

**Materials of a legal nature in support of this advisory may be found following the text of the policies or at the websites cited.** If you have any questions, or requests call Policy Services at (505) 469-0193 or E-mail Dr. Donn Williams, Policy Services Director at [nmsbapolicy@cox.net].

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