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# Personnel

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HPREC Policy Manual

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**500 PERSONNEL—LICENSED AND NON-LICENSED**

**501 Equal Opportunity Employment**

HPREC is an Equal Opportunity Employer and does not discriminate on the basis of race, color, national origin, sex, religion, age, marital status, disability, handicap, or veteran status in employment or the provision of services. This includes, but is not limited to educational services or employment. Inquiries concerning the application of Title VI, and Title VII of the Civil Rights Act, Section 504 of PL 92-112, and the Age Discrimination Act shall be referred to the Executive Director of the HPREC. The Americans with Disabilities Act of 1990, as amended, prohibits discrimination on the basis of disability, and protects qualified applicants and staff members with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, and other aspects of employment. The law also requires that covered entities provide qualified applicants and staff members with disabilities with necessary reasonable accommodations that do not impose undue hardship. It is the responsibility of the applicant or staff member to inform the Executive Director that an accommodation is needed.<sup>1</sup>

**5011 Classification of Staff Members**

The Council designates and defines the following classification of staff members:

1. **Licensed/Certified Personnel.** Staff members of HPREC paid from licensed salary schedules and who are required to be licensed by the New Mexico Public Education Department or other professional licensing boards.
2. **Support Personnel.** Staff members of HPREC who do not require a license
3. **Administrators.** Administratively licensed personnel who are paid as administrators and carry out administrative duties assigned by the Council and/or Executive Director.

**502 Background Investigations**

The HPREC will conduct work history, education history and reference investigations on each applicant recommended for employment including substitutes and temporaries. Each such applicant will be subject to a criminal background investigation, including mandatory fingerprinting at the applicant's expense, as a condition for further consideration for employment. An applicant for employment who has been initially certified by the New Mexico Public Education Department within twelve months of applying for employment with HPREC, shall not be required to submit to another background check if the New Mexico Public Education Department has copies of his/her Federal Bureau of Investigation records on file and if such copies are released to High Plains.<sup>2</sup>

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<sup>1</sup> Legal Reference: Civil Rights Act  
PL 92-112, Section 504  
Age Discrimination Act  
American with Disabilities Act

<sup>2</sup> Legal Reference: 22-10-3.3 NMSA, 1978

All offers of employment are contingent upon the satisfactory completion of background investigations. Criminal convictions shall not automatically bar an applicant from obtaining employment with HPREC, but pursuant to the Criminal Offender Act [NMSA 1978, 28-2-4 and 28-2-5], may be the basis for refusing employment.<sup>3</sup>

Criminal background checks, as presented above, shall also be conducted upon each contractor or staff member, at the expense of the contractor or staff member, if the contractor has unsupervised access to students. In such cases, contracts shall be subject to the satisfactory completion of background checks.

With regard to existing staff members, HPREC may conduct equivalent background investigations if it becomes aware of facts, circumstances or conduct giving rise to a reasonable suspicion that undisclosed aspects of the staff member's background might disqualify him or her to continue in employment with HPREC.

Records and any related information shall be privileged and shall not be disclosed to a person not directly involved in the employment decision affecting the specific applicant who has been offered employment or a contractor or staff member with unsupervised access to students.

### **503 Chain of Command**

HPREC Executive Director will report directly to the Council. All HPREC staff members will be responsible to and report to the Executive Director and their direct supervisor as detailed in the official HPREC organizational chart. When the HPREC staff member is working in a school district, he is to follow building/district policies and procedures. If there is a conflict, the staff member should try to resolve the issue(s) with the person involved. If it is not resolved, the HPREC staff member must inform the HPREC Executive Director and Director of Programs in writing. The HPREC Executive Director and Director of Programs will take appropriate and necessary action(s) per HPREC official policies.

### **504 Staff Development Opportunities**

The Council recognizes that staff members should continue to improve their competencies during their service. It expects the Executive Director to promote opportunities for staff development and for staff members to take advantage of them. To the extent feasible, the Executive Director should establish procedures by which staff members can receive proper support and recognition for efforts to improve themselves.

Encouragement shall be given to all staff members to attend meetings, take courses, and read literature describing innovative practices and the solving of program problems. HPREC Executive Director and/or Director of Programs will provide for professional growth through such means as the following:

- A. Planned in-service programs and workshops offered within HPREC.
- B. Released time for visits to other RECs and schools, and for attendance at conferences, workshops, and professional meetings. Application will be made to the Director of Programs in advance. The Director of Programs will forward any approved request to the Executive Director. (See 5105 Professional Leave policy)

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<sup>3</sup> Legal Reference: 28-2-4 NMSA, 1978

Reimbursements for expenses related to conferences and visitations will be approved by the Executive Director and/or Director of Programs in accordance with HPREC Official Policy; provided such expenses are within budget allocations for such purpose. Advance payment for approved professional development shall be made according to New Mexico Mileage and Per Diem Regulations.

#### **505 Staff member Grievance Resolution Procedure**

- A. **Purpose.** The purpose of this policy is for the reporting and resolution of legitimate employment-related concerns of the staff members of HPREC at the earliest possible time and with the least possible expense, disruption and conflict. The Council recognizes that most personnel difficulties encountered by staff members arise from a lack of communication. This procedure is designed to provide a formal mechanism for promoting or restoring such communication so that problems may be resolved before more serious difficulties result.
- B. **Definitions and Limitation**
1. "Grievant" shall mean a staff member who is personally and directly affected by a condition for which he or she seeks a resolution.
  2. A "grievance" shall be an allegation by a staff member that the treatment he or she received from a supervisor or staff member is unfair or improper, or that there has been a violation, a misinterpretation or an inequitable application of HPREC Official Policy, administrative rules or procedures, that directly and adversely affects the grievant. A single grievance may be submitted jointly by more than one grievant.
  3. "Resolution(s)" shall be the proposed written decision by the appropriate administrator(s), grievance review committee or Council, in response to the grievance.
  4. "Parties in interest" shall be the grievant and the supervisor or other staff member(s) of HPREC whose conduct or actions are the subject of the grievance.
  5. The following situations are not covered by this grievance procedure and are therefore not grievable under this policy:
    - a. The discretionary act(s) of professional judgment relating to the evaluation of the work performance of any staff member by his or her immediate supervisor;
    - b. Any personnel decision made by the Council, including, but not limited to, a refusal to re-employ, a discharge, a demotion, or any other action directly and adversely affecting the employment of an staff member;
    - c. Situations in which the Executive Director and the Council are without authority to act;
    - d. Situations in which the remedy for the alleged violation exclusively resides in some person, agency, or authority other than the Council;
    - e. Situations as to which a different procedure within the HPREC is prescribed by state or federal authority;
    - f. Situations as to which a different procedure or remedy has been provided by the Council; and
    - g. Situations involving a grievance by a contractor for the HPREC.
  6. A grievance cannot be filed by a former staff member after the effective date of termination or discharge from employment.

### C. **General Procedural Requirements**

1. A grievance must be initiated at Level 1, as provided in Section D, within ten (10) work days of the date upon which the grievant became aware of the circumstances, which gave rise to the grievance.
2. No persons shall suffer retaliation, recrimination, discrimination, harassment, or be otherwise adversely affected because of this grievance procedure.
3. Whenever possible, any grievance conference or hearing at any level shall be scheduled during a mutually convenient time that does not conflict with regularly scheduled provision of service.
4. A grievant requiring the attendance and testimony of other staff members shall have the right to bring such witnesses as are willing to testify on his or her behalf, and any necessary released time shall be provided and the expense borne by the HPREC when hearings must be scheduled during service time.
5. A separate file shall be maintained by the HPREC for grievances. All documents produced during the processing of a grievance shall be filed herein. All parties shall maintain confidentiality with regard to proceedings and the resolution of the grievance shall not be made public unless agreed to by the grievant and the Executive Director, or unless the grievant pursues the matter beyond this policy. The grievance shall be maintained for one (1) year after cleared according to the New Mexico State Records Center and Archives and access to the file shall be limited to the grievant, the immediate supervisor, the Executive Director, and members of the Council.
6. Nothing contained herein shall be construed to limit in any way the ability of the HPREC and the grievant to resolve any grievance by informal means, and nothing herein shall be construed as requiring resort to the formal procedures when grievable problems arise.
7. A grievant may terminate the process at any level if he or she indicates in writing a desire to do so, accepts the resolution at that level, or fails to pursue his or her grievance by filing at the next level within the specified time limit.
8. All grievances shall be filed and processed on grievance forms prepared by the HPREC and available in the HPREC's administrative offices.
9. The time limits at any level may be extended by mutual agreement between the grievant and the supervisor, Executive Director, review committee, or Council.
10. Except as otherwise provide herein, unless a party can demonstrate prejudice arising from a departure from the proceedings established in this policy, such departure shall be presumed to be harmless error.

### D. **Procedural Steps**

#### Level 1 (Informal Conference)

Prior to the filing of a formal written grievance, the grievant shall first discuss his or her grievance with his or her immediate supervisor in a good faith attempt to resolve the grievance prior to the filing of a formal grievance. In the case of a claim of sexual harassment in which the grievant's supervisor is the subject of the claim, the grievant may initiate the grievance at the next supervisory level above that of the subject supervisor.

#### Level 2 (Supervisor)

If the grievant is not satisfied with the discussion and disposition of his or her grievance at Level 1, he or she may file a written grievance with his or her immediate supervisor within ten days of the disposition. The immediate supervisor shall communicate his or her proposed resolution in writing to the grievant within five (5) workdays from the filing

of the written grievance. Although no hearing or conference is required at this level, the immediate supervisor shall have the discretion to require a hearing or conference and gather such evidence prior to the preparation of the decision as he or she, in his or her discretion, feels would assist in any appropriate resolution of the grievance. The hearing or conference, if any, shall be as informal as possible and shall be conducted as the immediate supervisor, in his or her discretion, feels is appropriate for a full understanding of the grievance, the position of the grievant and the evidence supporting that position.

Level 3 (Executive Director)

If the grievant is not satisfied with the resolution of the grievance at Level 2, or if the supervisor fails to issue a proposed resolution within the time limit set forth above, the grievant may file the grievance with the Executive Director within five (5) work days after the resolution was rendered or was due, if none was received. The Executive Director shall conduct a closed informal hearing with the parties in interest to the grievance within five (5) working days after receipt of the grievance. The hearing by the Executive Director shall be as informal as possible and shall be conducted, as he or she feels, is appropriate for a full understanding of the grievance. The Executive Director shall have the right to ask any questions of the interested parties as he or she deems necessary. Within five (5) work days following the hearing, the Executive Director shall render his or her written proposed resolution to the grievant.

Level 4 (Council)

If the grievant is not satisfied with the resolution of the grievance at Level 3, or if the Executive Director fails to issue a proposed resolution within the specified limit, the grievant may make a written request to the Executive Director for a hearing with the Council within five (5) work days after the Executive Director's resolution was rendered alternatively, was due, if none was received. At its sole option, the Council may appoint a Grievance Review Committee to hear the grievance. The Grievance Review Committee shall be composed of three (3) persons, one from each of the following staff categories:

1. Certified Instructor. To be selected from either HPREC staff members or participating entity staff members;
2. Administrator. To be selected from either HPREC staff members or participating entity staff members;
3. Non-certified staff member of HPREC or participating entities.

The members shall be appointed by the Council. The Committee shall select its chairperson prior to the processing of any grievance. The chairperson of the Committee shall schedule an informal hearing within five (5) work days of receipt of the grievance. If a Committee member is unable to participate in the informal hearing, the chairperson shall designate a substitute from within the staff member category of the non-attending member.

The procedure for the hearing shall be as follows:

1. The grievant shall present his/her grievance first, through testimony, witnesses, documents, etc. Cross-examination shall not be allowed by the other party in interest, if any.
2. The other party or parties in interest, if any, shall present their responses to the grievance. Cross-examination shall not be allowed.

3. The Committee may ask any questions that it deems necessary.
4. Arrangements to make a taped recording or to keep minutes of the proceeding shall be made by the chairperson. A verbatim written transcript is not required, but any minutes or other written record shall fairly reflect the substance of the hearing.
5. Within five (5) work days following the date of the hearing, the Committee shall transmit its findings and recommendations for proposed resolutions to the Council. Within ten (10) work days, the Council shall accept the recommendations of the Committee by a majority vote or agree to hear the grievance.

The holding of a hearing by the Council is discretionary with the Council, and such decision shall be made by the Council at its next regularly scheduled meeting after receipt of the written request for a hearing. If the Council rules that it is appropriate to hear the grievance, it shall set the date for such hearing and the parties in interest shall be notified by the Executive Director. The parties in interest shall submit written statements of position, which shall be delivered to the Council members at least five (5) work days prior to the hearing. In addition, any other documentary evidence desired to be reviewed by the Council shall be submitted at that time. The hearing shall be conducted as follows:

1. Each party in interest to the grievance shall have the opportunity to present oral statements limited to 30 minutes each. The presentation shall be limited to a review of evidence previously presented, unless the Council, in its discretion, allows new evidence to be presented during the hearing. Evidence may not be cross-examined by the other party in interest.
2. Since grievances are "personnel matters," the hearing may be conducted in an executive session, if the grievant so requests and the Council votes to close the hearing. The grievant may demand that the hearing be held in open session, in which case the hearing must be open.
3. The Council may make such inquiries of any party in interest, as it deems necessary or appropriate.
4. The Council shall render a final written decision within a reasonable time. In arriving at its decision, the Council has complete discretion in fashioning such relief, if any, as it believes is appropriate, regardless of the relief requested.

#### **506 Conflict of Interest**

Staff members of HPREC owe their full attention and loyalty while on the job to the best interests of the HPREC and its member districts and institutions. Various situations can create the potential for interfering with the physical performance of staff member's duties, or for bringing staff members' personal interests or the interests of some other person, group or entity into conflict with HPREC's best interests. All HPREC staff members must use their good judgment and avoid situations or relationships which interfere with their physical ability to perform their duties or which tend to divide their on-the-job loyalties.

#### **A. Outside Employment**

The Council recognizes that many HPREC staff members find it necessary or desirable to supplement their income through outside employment. Nevertheless, the Council considers that it has given full-time staff members' full-time jobs during the term of contract, and expects all HPREC staff members to give their assigned responsibilities priority over outside work.

The Council does not wish to infringe unduly upon any staff member's ability to augment his or her income through legal outside activities. However, outside work may legitimately concern the council if it interferes with the effective performance of a staff member's job related responsibilities, if it tends to compromise or embarrass the HPREC, or if it suggests a conflict of interest. Accordingly, the following rules shall govern staff members' outside employment.

1. HPREC staff members shall not perform any duties related to outside employment during regular working hours or within other assigned job related schedules.
2. No HPREC staff member may solicit or negotiate for, accept employment from or render any services for any outside person, firm, group or entity or own account if such employment or service:
  - a. Physically impairs the proper discharge of the staff member's official duties, or
  - b. Creates or tends to create a conflict between the interests of the HPREC and the staff member's personal interests or the interests of the outside person, firm, group or entity.

A full-time staff member who contemplates accepting outside employment shall submit in writing a request for outside employment to the Executive Director. The staff member must receive approval of the Executive Director before making any commitment to undertake outside work.

#### **B. Gifts and Gratuities**

Staff members of the Council are prohibited from accepting anything of material value from companies, organizations or individuals doing business with the HPREC. Staff members are prohibited from accepting anything of material value from any other individual, organization or company, which might compromise or reasonably appear to influence the exercise of independent judgment in the performance of official duties for HPREC.

#### **C. Staff member Business Dealings with HPREC**

1. **Philosophy.** HPREC exists to assist member schools and institutions in pursuance of excellence in education for the children of the region. To foster public confidence in the HPREC and to ensure fidelity to the mission of the member districts and institutions, it is essential that no staff member of the HPREC shall be permitted to exploit the employment relationship for personal financial gain beyond his or her authorized compensation. Even a suspicion of such exploitation is sufficient to erode public confidence in the HPREC. The Council accordingly adopts the following policies to guard against such eventualities.

2. **General Policy.** Section 22-21-1, NMSA, broadly prohibits certified staff members from profiting, even indirectly with their employing agencies, beyond the basic employment relationship. Violations are designated as fourth-degree felonies under the Criminal Code, which are punishable by imprisonment for up to 18 months and a fine of up to \$5,000.<sup>4</sup>

The Council hereby adopts the statutory prohibitions for non-certified staff members as well as certified personnel. Except for authorized, special services as provided below; or for allowable overtime compensation for non-certified personnel, it is the policy of the Council that no staff member of HPREC shall, directly or indirectly, receive or seek to

<sup>4</sup> Legal Reference: 22-21-1 NMSA, 1978 Comp.

receive any monetary gain from business dealings with or work for the HPREC beyond his or her official compensation. This policy shall govern despite the potential for a technically legal sale to the HPREC in the regular course of a staff member's business under the exceptions provided in Section 22-21-1B, NMSA.

**3. Special Contracts for Extra Duties.** Section 22-21-1B, NMSA accepts from the statute's general prohibitions "cases in which certified school instructors or certified school administrators contract to perform special services with the district with which they are employed during time periods wherein service is not required under a contract for instruction or administration." Executive Director may occasionally authorize special services contracts when such action seems appropriate to meet a particular need. However, no special services contract shall be authorized in any situation:

- a. Where the additional responsibilities would interfere physically with the proper performance of the staff member's primary duties, or
- b. Where the additional responsibilities would create a conflict of interest with or tend to influence the staff member's exercise of independent judgment in the performance of his or her primary duties, or where the potential for the appearance of such a conflict or influence reasonably exists.

**D. Paid Services.** To assure all students reasonable assistance without charge from their service providers and to avoid the potential for conflicts of interest, no service provider may receive any pay or anything of material value directly from any student who is assigned to the service provider's assigned case load.

**E. Professional Research and Publishing.** The Council considers that the HPREC has proprietary rights to publications, instructional materials, and other devices prepared by staff members of the HPREC during their paid work time.

When original materials are developed by staff members or staff committees during working time or as part of regular or special assignments for which they are paid, the HPREC will retain exclusive rights regarding publication or reproduction and may acknowledge the contributions of the staff member(s) who developed the materials. When proprietary rights are reasonably in doubt, such as when original materials have been developed partly on work time and partly and demonstrably on an staff member's own time, appropriate allocations of rights may be negotiated with the Executive Director's approval.

### **507 Political Activities**

The Council subscribes to the principle that HPREC staff members not only have the right but must also share in the responsibility for the development of sound public policy by assuming full political and citizenship responsibilities. A staff member who is a candidate for political office or has been elected to a non-partisan political office has a joint obligation to the public and to HPREC. HPREC staff members may not be candidates for partisan political office. During involvement with non-partisan political activities, a staff member will not:

- A. Misrepresent the HPREC but will take adequate precautions to distinguish between his personal views and HPREC views.
- B. Interfere with a colleague's exercise of political and citizenship rights and responsibilities.
- C. Use HPREC privileges, resources, or working time to promote political candidates or partisan political activities.

- D. Assign or expect children to participate in any aspect of campaigning, canvassing, or aiding in the processes of attempting to persuade voters to vote for or against individuals or measures as a part of required or enrichment activities or course work. Nor will children be used as a forum for a staff member to express personal feelings for or against any candidate in any election at any level.

Campaigning in person, circulating political literature for or against any candidate or cause, or the posting of such literature, is prohibited in the HPREC or on the HPREC premises with the exception of information and literature pertaining to HPREC, city, county, or higher education levies and bond issues. The Executive Director will act to ensure that unauthorized campaigning or distribution of literature is not permitted.

Upon request, the Council shall grant a political activity leave to a staff member to serve in the legislature and will consider on an individual basis requests for serving in other public offices that require time away from regular duties. Absences for public service leave shall not exceed 60 school days per contract year. However, if a need arises, such as special sessions, additional leave shall be granted upon the recommendation of the Executive Director and approval by the Council. Council approval for public service leave shall be required for the first term only.

Any HPREC staff member elected to a non-partisan public office who is appointed to a committee or committees dealing directly with program issues may file a request for leave without pay.

Staff members approved for absence from all assigned duties while serving the elected position shall be granted a leave without pay for all job time missed. Except, should the elected staff member fulfill partial job responsibilities while absent from regular duties, he will be paid on a pro-rata basis for verified hours/days worked.

### **508 Public Appearances**

Only those HPREC staff members receiving prior approval of the Executive Director may officially represent the Council and the HPREC before a public or professional group speaking on behalf of the HPREC on its policies, rules and regulations, philosophies and programs.

### **509 Personnel Records**

Personnel records of current and past applicants and staff members shall be the property of the HPREC. These personnel folders shall be placed in locked fireproof files in the HPREC office.

The personnel records may include but not be limited to the following documents where applicable:

1. Background information and documentation about training, experience, references, credentials, application form, personal data, licensure information, proof of age and nationality and any other information deemed appropriate and necessary.
2. Record of service within the HPREC consisting of service and program assignments, copies of contracts, transfer and leave requests, payroll information, supervisory and evaluation documents, letters of resignation, and other records deemed important and appropriate.
3. Termination information, which shall indicate whether termination was by resignation or dismissal. All information in an staff member's personnel file shall be open to the

staff member except access to the confidential papers of placement bureaus and references received from former employers or personal references given by an employer on an application prior to employment which such placement offices or employers have requested be kept confidential

4. Records related to medical conditions or disability, personnel grievances, and formal personnel evaluations results shall be contained in permanent confidential files apart from regular personnel files per federal regulations and Council policies.

Access to General Personnel Files – General personnel files will be open to the following HPREC personnel:

1. Staff member concerned, except for confidential college placement papers and references received in confidence.
2. Executive Director and Director of Programs.
3. Human Resource staff as required in the performance of duties.
4. Council during official personnel sessions.
5. Designated HPREC attorney during official personnel sessions of the Council or as requested by the Executive Director.

Access to Confidential Personnel Files:

Confidential personnel files, which contain criminal background checks, confidential medical information, and personnel grievances will be accessed only by the staff member, the Executive Director, Director of Programs, Human Resources, the Council when convened in personnel session, and the Council's attorney as requested by the Executive Director.

Access by Outside Parties - It shall be the policy of HPREC to protect the privacy of current, former and prospective staff members to the extent permitted by law. Accordingly, all personnel information retained by HPREC shall be considered confidential unless the Inspection of Public Records Act [ NMSA 14-2-1 et. seq.] requires otherwise<sup>5</sup>.

Confidential personnel information will not be released without the affected person's written consent unless an administrator who is responsible for maintaining the relevant records determines that exceptional circumstances justify such an action. Other personnel information will be made available pursuant to the Inspection of Public Act, as interpreted by New Mexico courts.

The Act and decisions interpreting it provide that the following types of personnel information may be treated as confidential:

1. Letters of reference concerning employment, licensing or permits;
2. Letters of memoranda which are matters of opinion in personnel files, including documents concerning infractions and disciplinary actions, performance evaluations, and related materials, opinions as to whether a person should be rehired or reasons why an applicant was not hired, and any other material expressing an opinion as to a current or former staff member or an applicant for employment;
3. Medical and related information pertaining to illness, injury, disability to perform a job task, or sick leave;
4. Names or other identifying information on applicants for positions within the HPREC until and unless one or more persons outside the HPREC are contacted for further

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<sup>5</sup> Legal Reference: Inspection of Public Records Act 14-2-1 et.seq. NMSA, 1978 Comp.

- information regarding a particular applicant; and
5. Other types of personal information, such as military discharge or arrest records, (a) which is solicited by the HPREC; (b) which is considered vital to the employment procedure; (c) which was furnished after a promise to keep the information confidential; and (d) for which disclosure would not appear to serve any identifiable interest.

Staff members are personally responsible for securing verification of service, transcripts, health certificates, birth certificates, required licenses, fingerprinting and criminal background checks, etc.

Materials shall not be removed from the individual personnel folder except for review. Personnel records shall not be removed from the Human Resources office or the office of the Executive Director except as designated in policy.

Copies may be provided at a reasonable cost except as to matters involving litigation or threat of litigation in which event copies will be made available through a designated HPREC attorney or appropriate representatives determined by the Executive Director.

Lists of HPREC personnel will not be released to political, commercial, religious groups or by HPREC staff. Release of lists of personnel to educational groups or organizations shall be at the discretion of the Executive Director.

### **510 Staff Member Leave Benefits**

All leave benefits are limited to permanent full-time staff members and to permanent part-time staff members who work at least twenty (20) hours weekly for at least a 170-day contract. Leave benefits do not apply to occasional or temporary staff members such as substitutes, student workers, hourly-rate service providers, or staff members hired to complete short-term projects.

Leave benefits for part-time staff members who work at least twenty (20) hours weekly are pro-rated based on how their work hours related to a full-time 40-hour week. A staff member who works 20 hours weekly would receive .50 of the leave granted a full-time staff member, i.e., such a staff member would be awarded .50 sick day for each contract month completed. A twelve-month staff member who works 20 hours weekly would be awarded .50 day personal leave per year without deduction in salary upon advance approval of the Executive Director. Leave benefits for staff members who are considered permanent full-time staff members but whose contracts are for less than 170 days will also be accrued on a pro rated basis. Except in cases of illness or emergency, all leave must be requested in advance and approval granted by the Executive Director before leave is taken. In approving leave requests, the Executive Director will consider both the staff member's need for leave and the HPREC's purpose to provide efficient services to its member districts. In cases of illness or emergency, HPREC is to be contacted as soon as possible.

#### **5100 Sick/Medical Leave**

Full-time HPREC staff members are allowed one (1) day paid sick/medical leave per contract month per year without deduction in salary. This leave is accumulated at the rate of one (1) day per month (.50 day per month for part-time staff members who work 20 hours weekly) of active service up to a total accumulation of the length of the annual contract/employment agreement. Staff members who are considered permanent full-time staff members but who work less than a 170-day contract will accrue medical leave at the percentage their

contract relates to a 170-day contract, i.e., a staff member who has a 140-day contract will receive 140/170 day for each contract month or .82 days per month.

At the discretion of the Executive Director, a staff member may be granted advance leave based on individual circumstances and organizational requirements. The maximum advancement is the amount that the staff member could earn for the remainder of the current contract year. If advance leave is granted, the Executive Director must insure that the staff member will make up the leave deficiency within the contract year or repay HPREC for any overpayment of salary caused by overdrawn sick leave should there be a termination of employment or when a deficit exists at the end of the contract year. A negative sick leave balance shall not be carried over from one contract year to the next. Before salary reduction is implemented to repay advance sick leave, the staff member must first use sick leave as accumulated, then annual leave or comp time accumulation, then personal leave; after these leave sources are exhausted, the overdrawn amount will be deducted from the staff members pay on a day-for-day basis. Upon the written request of the staff member, the Executive Director may authorize the payroll clerk to reduce the amount of payroll checks so that the anticipated deficit payment is allocated over the remaining contract period rather than for the final payroll period only.

A staff member claiming sick leave who is absent more than four consecutive work days shall submit a doctor's certificate attesting to said illness. If at any time the Executive Director has reason to suspect the abuse of sick leave benefits, i.e., a staff member who misses the day before or after a weekend on a regular basis, etc., the Executive Director may request a doctor's certificate. If at any time there is a question as to the ability of a staff member to perform one's assigned responsibilities, the HPREC will require an examination by a HPREC appointed doctor; the HPREC will pay for such a required examination.

Sick leave may be authorized for:

1. Personal medical treatment or illness of the staff member;
2. Medical treatment or illness of a member of the immediate family,
3. A death in the immediate family,
4. The actual period of temporary disability connected with childbearing or recovery therefrom as defined below:
  - a. The natural mother may use accumulated sick leave for the actual period of temporary disability caused or contributed to by pregnancy and childbirth.
  - b. The natural father may request sick leave to care for the mother and newborn infant during the natural mother's period of temporary disability. Since there is no certainty as to when disability actually begins and ends, a doctor's certificate or other acceptable proof shall be required verifying the staff member's period of temporary disability. At the request of the Executive Director, the staff member may also be asked to provide a doctor's verification of any significant or continuing pre-delivery absences.
5. Adoption of a child under five years of age, limited to 30 days for each parent;

### **Definitions**

The immediate family is defined as the staff member and spouse, their children, brothers, sisters, parents, grandparents, grandchildren. Absence due to illness or

death of a close relative or friend of the staff member, other than those individuals listed in the definitions above, must be approved in advance by the Executive Director. Details as to the close relationship must be included in the written request for leave.

### **51001 Family and Medical Leave Act Leave of Absence**

This policy is adopted to implement the federal Family and Medical Leave Act of 1993 (FMLA) pursuant to the terms, conditions, and limitations of the Act. In the event of any conflict between the provisions of this or any other leave policy of the Council and the provisions of the FMLA, the latter shall prevail.

1. To be eligible for leave under the Act a staff member must have worked for the HPREC for a total of 12 months, during which the staff member must have worked a total of 1,250 hours.
2. Pursuant to the Family and Medical Leave Act, staff members are permitted up to 12 work weeks of unpaid leave per year during any 12-month period. Family and medical leave can be requested for the following reasons:
  - a. Childbirth and infant care;
  - b. Placement of a child with the staff member for adoption or placement of a child with the staff member by a state agency for foster care (entitlement to leave for birth or placement of a child expires 12 months after the birth or placement of the child);
  - c. Care of the staff member's spouse, son or daughter or parent with a serious health condition; and
  - d. The inability of the staff member to perform his or her job duties due to his or her own serious health condition, or the necessary absence from work of an staff member to receive medically necessary treatment.

The 12-month period within which each staff member may take 12 weeks of leave under the FMLA shall be a "rolling" 12-month period, measured backward for each staff member from the first time each such staff member uses leave under the FMLA.

3. A "serious health condition" is an illness, injury, impairment or physical or mental condition that involves:
  - a. any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
  - b. a period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
  - c. any period of incapacity due to pregnancy, or for prenatal care; or
  - d. any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc); or a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc); or
  - e. any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a

condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

4. A staff member requesting leave shall submit a "Request for Leave" form to the Executive Director.
5. If a staff member requests leave for treatment of a staff member's serious medical condition or for that of a child, parent, or spouse, the staff member must make a reasonable effort to schedule the treatment at a time that is not unduly disruptive to the HPREC.
6. A staff member seeking leave for a foreseeable reason such as the birth or placement of a child or for planned medical treatment, shall provide the HPREC with at least 30 days advance notice of the leave. If 30 days advance notice is not possible under the circumstances, e.g. in the case of a premature birth, the staff member shall give such notice as is practicable, e.g., within one or two business days of the day the staff member learns of the need for leave. If a staff member's reason for seeking leave was unforeseeable, such staff member shall give such notice as is practicable. A staff member who fails to give notice of leave as required herein may be denied such leave until the notice requirements are met. If less than 30 days notice is provided, the staff member must schedule an appointment with the Executive Director for approval.
7. An staff member seeking leave on the basis of the serious medical condition of the staff member or the staff member's spouse, son or daughter, or parent, must provide certification issued by the health care provider of the staff member or of the staff member's spouse, son or daughter, or parent, stating:
  - a. The date the condition began,
  - b. Its probable duration,
  - c. Appropriate medical facts, and
  - d. That, for a specified time, either:
    - i. The staff member is unable to perform his or her job functions or will be unavailable to do so while receiving necessary medical treatment, or
    - ii. The staff member will be needed to care for the sick family member.

If the adequacy of medical certification is questioned by HPREC, HPREC may require the staff member to seek the opinion of a second health care provider, who is not regularly employed by HPREC, at the expense of the HPREC. If the opinions of the first and second health care providers differ, HPREC may require the staff member to obtain a third opinion at the HPREC's expense, from a health care provider agreed upon by the staff member and the HPREC. The third opinion shall be final and binding.

8. Health care providers who may provide certification of a serious health conditions include:
  - a. Doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;

- b. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice under State law;
  - c. Nurse practitioners, nurse-midwives, and clinical social workers authorized to practice under State law and performing within the scope of their practice as defined under State law;
  - d. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
  - e. Any health care provider recognized by HPREC or HPREC's group health plan's benefit manager; and
  - f. A health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.
9. Spouses employed by the HPREC are limited to a combined total of 12 workweeks per year for the birth or placement of a child, or to care for a parent. However, for other covered leaves, such as to care for a spouse or child, or for treatment of the staff member's own serious health condition, each spouse may take up to 12 weeks a year.
10. Intermittent leave and reduced work schedules are allowed when such are medically necessary; however, staff members may not take intermittent leaves or go on reduced work schedules that reduce the number of hours worked per week or per day for childbirth/infant care or adoption leave.
11. If any staff member requests intermittent leave or leave on a reduced work schedule to care for a seriously-ill family member or for the staff member's own serious health condition, and the need for leave is foreseeable based upon planned medical treatment, the staff member may temporarily be transferred to an available alternative position with equivalent pay and benefits, if the staff member is qualified for the position and the position better accommodates recurring periods of leave than the staff member's regular job.
12. All requests for family/medical leave must be approved by the Executive Director.
13. Staff members who take family/medical leave must utilize any available paid leave they have accrued under another of the Council's leave policies when the reason for leave corresponds with the basis for leave under the other policy. Accrued vacation or personal leave shall be substituted for any FMLA-qualifying purpose. If the request leave period extends beyond the staff member's accrued number of paid leave days, the remaining leave days will be unpaid.
14. Any staff member seeking leave shall explain the reasons for the need leave on forms provided by the HPREC. It shall be the HPREC's responsibility to identify the requested leave as covered by the FMLA as paid or unpaid on the basis of leave time accrued under other leave policies. Such identification

shall be made at the time leave is requested or during such leave, on the basis of information provided by the staff member.

15. During the period of leave, the HPREC will maintain the employer's coverage for the staff member under its group benefits plan if enrolled; however, the staff member is responsible for continuing to pay the staff member's bi-weekly portion of the premium. If a staff member fails to make payment of the staff member's share of health insurance premiums for 30 days after such payment is due, coverage of such staff member for benefits shall be discontinued. If the staff member fails to return to work following leave under the FMLA for any reason (1) other than the continuation of the FMLA-qualifying circumstances upon which the need for leave was originally based, or (2) circumstances beyond the control of the staff member, the staff member shall be required to reimburse HPREC for the employer's cost of benefit premiums HPREC paid to maintain coverage for the staff member during the leave period.
16. Staff members will not accrue leave or other benefits during the family/medical leave period.
17. A staff member other than a "key staff member," who has taken family/medical leave will be restored to his or her previous position or to a position of equivalent pay, benefit, and other terms and conditions of employment. Equivalency of positions shall be determined on the basis of HPREC policy. A "key staff member" may be denied reinstatement if it would create a substantial and grievous economic injury for the HPREC. A "key staff member" is one whose compensation is within the highest 10 percent of the work force of the HPREC.
18. A notice to staff members shall be posted describing the provisions of the FMLA, provided and approved by the Wage and Hour Division of the United States Department of Labor.

#### **5101 Personal Leave**

Twelve-month full-time HPREC staff members on a 261-day contract and full-time HPREC related service personnel on a 172-day are allowed one (1) day personal leave per contract year without deduction in salary upon advance approval of the Executive Director. Part-time staff members who work at least 20 hours weekly are allowed personal leave on a pro-rated basis. Any additional days requested for personal leave and approved by the Executive Director shall be charged to the staff member by deduction from the last paycheck of one (1) day's salary for each day of absence, i.e., full-time staff members on a 261-day contract will be charged 1/261 of their contract salary and full-time related service provider members on a 172-day contract will be charged 1/172 of their contract salary.

Personal leave does not accumulate and must be used during the contract year in which it is accrued. Personal leave must be requested one week in advance. Personal leave cannot be taken on mandatory in-service days and may not be used to fulfill the last day of a contract.

**5102 Court or Jury Duty Leave**

Court/Subpoena -- Leave shall be granted to a staff member to respond to a subpoena, which requires that staff member's absence from duty. Leave will be granted only in response to a subpoena and not for the purpose of legal consultation or voluntary courtroom attendance.

**Jury Duty.** Staff members of HPREC are eligible for leave with pay when required to serve as a juror or to appear as a witness in obedience to a subpoena before a federal or state grand jury or court. Any public staff member shall not be compensated for jury services during normal working hours. If the staff member receives compensation for services, not including reimbursement for travel, the payment shall go directly to HPREC.

If a staff member, upon reporting for jury duty in the morning, learns that he/she is dismissed for jury duty for the remainder of the day, he/she is to report for duty at HPREC/assigned school and resume duties or do work as assigned by the Executive Director or Director of Programs for the remainder of the day. A leave request must be submitted with a copy of the subpoena or the letter from the court assigning jury duty.

**5103 Maternity/Paternal Leave**

For eligible staff members (those with at least 12 months/1250 hours HPREC employment), absence for childbirth or adoption is covered by and may be taken under the family and medical leave policy described in 51001. For staff members not eligible for family and medical leave, or for those staff members not wanting to use family and medical leave, absence for childbirth or adoption is covered by Policy 5100 Sick/Medical leave; also, in addition to leave provided less than 5100 and 51001, reasonable leave of absence without compensation will be granted for maternity/paternity. The Executive Director will make a determination as to the length of unpaid leave to be provided after consideration of the doctor's documentation required by Policy 5100.

Maternity/Paternal leave is available to permanent full-time or part-time (regularly scheduled to work 20 hours a week or more) staff members who are the natural parents of a newborn child or the adoptive parents of a newly adopted child under five years of age. Maternity/paternal leave is first charged against sick leave, then vacation or annual leave, comp time in the case of non-certified staff members, then personal leave, then leave without pay, or any appropriate combination as determined by the Executive Director.

The contract amount of the staff member will be reduced by a per diem amount based on the number of days granted as leave without pay. Upon the written request of the staff member, the Executive Director may direct the Human Resources to equalize the reduction of salary paid on any remaining payroll checks so that the reduction is spread out over the remaining contract period rather than from the final payroll period only.

Thirty (30) days notice shall be given prior to the beginning of maternity/paternal leave when medically possible; if thirty (30) days notice is not possible under the circumstances, e.g., in the case of a premature birth, the staff member shall give

such notice as is practicable, but not later than five (5) working days from the date the staff member learns of the need for leave.

#### **5104 Workers' Compensation Leave Benefits**

**Staff member Accidents.** All staff members are covered under the provisions of Worker's Compensation for injuries occurring on the job. Accident reports are available in the personnel office and must be completed and forwarded to the immediate supervisor at the time of injury.

**Workers' Compensation Coverage.** Statutorily required workers' compensation leave benefits are provided through the State of New Mexico Risk Management Program. This program covers loss of wages and disability (partial, temporary, or permanent) for work related injuries only. The program coordinates with sick leave benefits in that all accumulated sick leave is used prior to workers' compensation leave benefits.

The day of injury is considered as a full day worked; no sick leave will be charged regardless of time of injury if staff member seeks medical treatment. When a staff member is off work more than seven days due to a work-related incident, worker's compensation benefits will be paid by the worker's compensation carrier based on a weekly rate payable every two weeks and continued while the staff member is disabled. A staff member may use his personal sick leave for the initial seven-day period (normally five working days). If a staff member is off work more than four weeks, compensation is retroactive to date of disability and sick leave is reinstated. The Worker's Compensation carrier will reimburse the HPREC for this absence. The weekly compensation rate for total disability is 66 2/3% of the staff member's average weekly gross earnings subject to the maximum specified by law. (Worker's Compensation Act, Chapter 52, NMSA 1978)

At the time of a qualifying disability, the staff member will be removed from the HPREC's payroll and will receive worker's compensation benefits from the insurance carrier according to Worker's Compensation Administration regulations. In order to continue current personal insurance benefits (health, dental, etc.), it will be necessary for the staff member to pay directly to the HPREC the amount of his payroll deduction for insurance premiums once he has been removed from the payroll to be placed on worker's compensation. The premium payment will be due in the payroll office on or before the first working day of each month. The HPREC will continue payment of its portion of this insurance premium while the staff member is under contract.

A worker injured on the job is entitled to medical care. Either the worker or the employer may choose the health care provider for the initial sixty (60) day period. The party who did not choose the initial health care provider may select the health care provider for the remaining medical benefit period beyond the initial sixty (60) day period. Either may challenge the health care choice of the other by notifying the Executive Director of Workers' Compensation Administration in writing. A Workers' Compensation Judge will hear the challenge and render a final decision within seven (7) days.

**5105 Professional Leave**

Professional leave is available for those HPREC staff members representing the HPREC or a participating district in a particular instructional area. Such leave is subject to approval by the Director of Programs and/or the Executive Director. All such leave is subject to review based on budget available.

After professional leave is approved, the staff member will be entitled to travel and per diem and workshop cost as approved by the Executive Director and as permissible under the Per Diem and Mileage Act. Professional leave is to provide an opportunity for staff to participate in professional organizations, meetings and in-service on a local, district, state and national basis and when serving as a leader in such an activity. Permission for such absence is to be requested two (2) weeks in advance. Special consideration on an individual basis shall be given to those elected or appointed as a state or national officer.

Requests for professional leave over and beyond set limits shall be evaluated by the Executive Director and Director of Programs as to their benefit to the HPREC and member institutions. Ordinarily, such leave will be limited to four (4) days per year per staff member.

**5106 Military Leave**

The Veteran's Reemployment Rights law requires that staff members be granted a leave of absence to perform their military duties. Staff members granted a military leave of absence are entitled to participate during the leave period in insurance and other benefits offered by the employer to the same extent as staff members granted other types of leave. The HPREC will discontinue contractual payments to the staff member when military leave begins.

Staff members retain employment rights over a period of up to five years of active duty. The period may be extended to a total of five years if the extension is at the request and for the convenience of the government. An staff member who leaves his position voluntarily or involuntarily has the right to return to employment if certification of satisfactory military service is provided and application for reemployment is made as follows: regular military personnel released from active duty must apply for reemployment within 90 days; reserve personnel called to active duty for an initial period of 90 days or less, or for 180 days or less if extended, must apply for reemployment within 31 days of release from active duty; reserve personnel called for active duty for more than 180 days must reapply within 90 days from release.

HPREC staff members who are members of the National Guard (Army or Air) or Reserves (Army, Air Force, Navy, Marine or Coast Guard) shall be given military leave with pay when they are ordered to duty for training. Such leave shall not exceed fifteen (15) working days per federal fiscal year. This leave shall be in addition to other leave or vacation times with pay to which such staff members are otherwise entitled.

Any regular staff member of the HPREC who is a member of a military reserve unit and is ordered to active duty shall be given military leave. Such military leave for active duty will be granted as follows:

1. **Leave with Pay.** Leave with pay will be given for a period not to exceed fifteen (15) working days in any one calendar year or in any one continuous period for such absence.

During the fifteen (15) days of paid leave, the HPREC will continue the co-payment amount of the staff member's insurance premium(s).

2. **Leave without Pay.** Should a staff member need to be on extended military leave for active duty, leave without pay will be granted.

Once the 15-day period of paid military leave and all accrued annual or personal leave have been exhausted, the staff member must pay the full premium for insurance.

Upon application for re-employment, the staff member shall be placed in his former position or in one, which is available and suitable. No staff member will be subject to loss of seniority or benefits because of such leave.

In order to exercise the above rights, a staff member must apply for re-employment within 90 days following an honorable discharge or release from active duty or within a period of one (1) year should hospitalization continue after honorable discharge.

#### **5107 Other Leave of Absence**

After a staff member is employed for the fourth consecutive year, it is possible to request a leave of absence for academic study, extended illness or community service. Maximum leave is for one year, unless absence begins at mid-term, then the leave may be extended through the following school term. Any leave will be without pay; re-employment will be contingent upon a vacancy for which the staff member is qualified, such qualifications to be established by the Executive Director. Such re-employment will be considered only during the immediate school year following the leave; subsequent years would require a new application for employment with no consideration given for past employment. If leave is approved and the individual returns to the HPREC during the school term immediately following leave, the status of the individual would remain the same as it was at the time the leave was granted regarding sick leave and insurance (if full premiums are paid during the leave by the staff member). Applications for such leave should be made to the Executive Director in writing at least sixty (60) days prior to the granting of such leave. A leave of absence shall require Executive Director approval before being granted.

#### **5108 Emergency Road Conditions Leave**

When an staff member on a 172-day contract is unable to work at their regular duty station due to impassable road conditions or school closures resulting from weather conditions, the Executive Director may assign the staff member to a different duty station for that day or may require the staff member to make up the day as scheduled by the Director of Programs and the Executive Director (as documented on a Schedule Change form). If the staff member does not make up one (1) contract day missed due to weather conditions, that day shall be counted against available personal leave, if available. If all accumulated leave has been exhausted or if any additional days missed due to weather conditions are not

made up, deduction will be made on a per diem basis from the staff member's paycheck.

A staff member on a 261-day contract who misses work due to road conditions may make up one (1) such day at the discretion of the Executive Director. Any additional such days missed will be counted against available leave—first against personal leave, then against vacation/annual leave or comp time accumulation.. If all accumulated leave has been exhausted, deduction will be made on a per diem basis from the staff member's paycheck.

### **5109 Vacations, Holidays**

Twelve (12) month (261-days) staff members shall have two working weeks vacation yearly during the first three (3) years of employment. One additional vacation day per year will be added in employment years four through eight up to a total of three weeks annually. Vacation days are accrued at the rate of one (1) day for each 26 days worked with additional days after the third employment year to be added at the beginning of the contract period. Up to forty (40) hours of vacation leave can be carried forward from year to year.

Use of earned vacation leave by all staff members is in the best interests of both the HPREC and the individual staff member. It is the policy of HPREC, therefore, to encourage staff members to make *appropriate* use of earned vacation leave each year. Every effort will be made to grant vacation leave according to each staff member's request.

Requests for vacation leave must be submitted to the Executive Director and/or Director of Programs at least two weeks prior to leave and will be granted at the discretion of the Executive Director.

**5110 Donation of Leave** Employees may donate leave to another employee within HPREC for a medical emergency with the approval of the Executive Director. Request and approval of Donation of Leave must be in writing.

### **511 Insurance Programs**

Risk Management will annually determine an insurance benefit program for staff members as allowed by law. Such benefit programs are limited to full-time staff members or part-time staff members who work at least 20 hours weekly for a minimum 170-day contract or equivalent as determined by the Executive Director. They do not apply to occasional workers such as substitute teachers, student workers, or hourly-rate service providers.

HPREC will pay the statutorily required percentage of insurance premium on those insurance programs it elects to offer. Other programs may be provided to staff members on a staff member-pay-all basis. HPREC will pay only its percentage of insurance premium for those staff members collecting worker's compensation benefits.

### **512 Retirement**

HPREC staff members are provided retirement benefits through the Educational Retirement Board of New Mexico as per Sections 22-11-1 through 22-11-52 NMSA, 1978 Compilation. Required deductions for such benefit shall be made from staff

member paychecks.<sup>6</sup>

### **513 Travel Expenses**

Every effort should be made to minimize travel time and thus maximize child service time.

#### **1. Related Service Personnel**

Reimbursement for travel expense for assigned/scheduled work and out of district travel will be based on the New Mexico Per Diem and Mileage Act and HPREC travel procedures as outlined in the procedure manual. All out of district travel must be approved in advance by the Executive Director and/or Director of Programs.

#### **2. HPREC Office Personnel**

Travel reimbursements are prescribed by the New Mexico Per Diem and Mileage Act. Travel requests will be made by completing a Travel Plan & Reimbursement Request for Travel form. All travel must be approved in advance by the Executive Director and/or Director of Programs.

### **514 Staff and Student Health and Safety Issues**

#### **5140 Harassment and Violence**

**1. General Statement of Policy.** It is the policy of the HPREC Council to maintain a learning and working environment that is free from religious, racial or sexual harassment and violence. The Council prohibits any form of religious, racial or sexual harassment and violence.

It shall be a violation of this policy for any HPREC staff member to harass a pupil, teacher, administrator or other school or HPREC personnel through conduct or communication of a sexual nature or regarding religion and race as defined by this policy. (For purposes of this policy, personnel includes Council members, HPREC staff members and administrators, volunteers, contractors or persons subject to the supervision and control of the Council.)

It shall be a violation of this policy for any HPREC personnel to inflict, threaten to inflict, or attempt to inflict religious, racial, or sexual violence upon any pupil, teacher, administrator or other school or HPREC personnel.

The Council will act to investigate all complaints, either formal or informal, verbal or written, of religious, racial or sexual harassment or violence, and to discipline or take appropriate action against any HPREC personnel who is found to have violated this policy.

#### **2. Definitions.**

- a. Sexual Harassment: Definition. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical contact or communication of a sexual nature when:
  - i. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment, or of obtaining an education; or

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<sup>6</sup> Legal Reference: 22-11-1 to 22-11-52 NMSA, 1978 Comp.

- ii. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
- iii. That conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's employment or education, or creating an intimidating, hostile or offensive employment or educational environment.

Sexual harassment may include but is not limited to:

- i. Unwelcome verbal harassment or abuse;
  - ii. Unwelcome pressure for sexual activity;
  - iii. Unwelcome, sexually motivated or inappropriate physical contact, other than necessary restraint of pupil(s) by teachers, administrators or other personnel to avoid physical harm to persons or property;
  - iv. Unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats concerning an individual's employment or educational status;
  - v. Unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status; or
  - vi. Unwelcome behavior or words directed at an individual because of gender.
- b. Racial Harassment; Definition. Racial harassment consists of physical or verbal conduct relating to an individual's race when the conduct:
- i. Has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
  - ii. Has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
  - iii. Otherwise adversely affects an individual's employment or academic opportunities.
- c. Religious Harassment; Definition. Religious harassment consists of physical or verbal conduct which is related to an individual's religion when the conduct:
- i. Has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
  - ii. Has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
  - iii. Otherwise adversely affects an individual's employment or academic opportunities.
- d. Sexual Violence; Definition. Sexual violence is a physical act of aggression or force or the threat thereof, which involves the touching of another's intimate parts, or forcing a person to touch any person's intimate parts. Intimate parts include the primary genital area, groin, inner thigh, buttocks or breast, as well as the clothing covering these areas:

Sexual violence may include, but is not limited to:

- (1) Touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
- (2) Coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;

- (3) Coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another, or
  - (4) Threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.
- e. Racial Violence; Definition. Racial violence is a physical act of aggression or assault because of, or in a manner reasonably related to, race.
- f. Religious Violence; Definition. Religious violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, religion.
- g. Assault; Definition.  
Assault is:
- (1) An act done with intent to cause fear in another of immediate bodily harm or death;
  - (2) The intentional infliction of or attempt to inflict bodily harm upon another; or
  - (3) The threat to do bodily harm to another with present ability to carry out the threat.

### 3. Reporting Procedures.

Any person who believes he or she has been the victim of religious, racial or sexual harassment or violence by HPREC personnel, or any person with knowledge or belief of conduct which may constitute religious, racial or sexual harassment or violence toward a pupil, teacher, administrator or other school or HPREC personnel should report the alleged acts immediately to an appropriate administrator or Council member designated by this policy. Nothing in this policy shall prevent any person from reporting harassment or violence directly to the Executive Director or Council chair.

- a. HPREC Service Providers/District Personnel. The Director of Programs is responsible for receiving oral or written reports of religious, racial or sexual harassment or violence from or regarding HPREC staff members who provide service in participating school districts/institutions. Any adult staff member who receives a report of religious, racial or sexual harassment or violence shall inform the Director of Programs immediately.

Upon receipt of a report, the Director of Programs must notify the Executive Director immediately, without screening or investigating the report. The Director of Programs may request, but may not insist upon, a written complaint. A written statement of the facts alleged will be forwarded as soon as practicable by the Director of Programs to the Executive Director. If the report was given verbally, the Director of Programs will personally reduce it to written form within 24 hours and forward it to the Executive Director. Failure to forward any harassment or violence report or complaint as provided herein will result in disciplinary action against the Director of Programs. If the complaint involves the Director of Programs, the complaint shall be made or filed directly with the Executive Director by the reporting party or complainant.

- b. In the HPREC. The Council hereby designates the Executive Director to receive reports or complaints of religious, racial or sexual harassment or

violence. The name, address, and telephone number of the Executive Director shall be conspicuously posted.

- c. Submission of a good faith complaint or report of religious, racial or sexual harassment or violence will not affect the complainant or reporter's future employment, grades or work assignments.
- d. Use of formal reporting forms is not mandatory.
- e. The HPREC will respect the privacy of the complainant, the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with its legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations.

**1. The Investigation.**

By authority of the Council, the Executive Director, upon receipt of a report or complaint alleging religious, racial or sexual harassment or violence, shall immediately undertake or authorize an investigation. The investigation may be conducted by HPREC officials or by a third party designated by the HPREC.

The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.

In determining whether alleged conduct constitutes a violation of this policy, the HPREC should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.

In addition, the HPREC may take immediate steps, at its discretion, to protect the complainant, pupils, teachers, administrators or other school personnel pending completion of an investigation of alleged religious, racial or sexual harassment or violence.

The investigation will be completed as soon as practicable and filed with the Executive Director. If the Executive Director personally conducts the investigation or if the complaint involves the Executive Director, the report will be filed directly with the Council. The report shall include a determination of whether the allegations have been substantiated as factual and whether there appears to be a violation of this policy.

**5. Council Action.**

- a. Upon receipt of a report, the Council will take appropriate action. Such action may include, but is not limited to, warning, suspension, transfer, remediation, termination or discharge. Action taken for violation of this policy will be consistent with New Mexico and federal law and Council policies.

- b. The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant by HPREC in accordance with state and federal law regarding data or records privacy.

#### **6. Reprisal.**

The Council and/or Executive Director will discipline or take appropriate action against any HPREC personnel who retaliates against any person who reports alleged religious, racial or sexual harassment or violence or any person who testifies, assists or participates in a proceeding or hearing relating to such harassment or violence. Retaliation includes, but is not limited to, any form of intimidation, reprisal or harassment.

#### **7. Right To Alternative Complaint Procedures.**

These procedures do not deny the right of any individual to pursue other avenues of recourse, which may include initiating civil action or seeking redress under state criminal statutes and/or federal law.

#### **8. Harassment or Violence As Abuse.**

Under certain circumstances, alleged harassment or violence may also be possible abuse under New Mexico law. If so, the duties of mandatory reporting may be applicable. Nothing in this policy will prohibit the Council from taking immediate action to protect victims of alleged harassment, violence or abuse.

#### **9. Dissemination of Policy and Training**

- a. This policy shall be distributed to all staff members in the policy handbook and shall be posted in the HPREC offices.
- b. The HPREC will develop appropriate methods of discussing this policy with member districts staff members.
- c. This policy shall be reviewed at least annually for compliance with state and federal law.

#### **5141 Staff – Student Relations**

Staff members of HPREC are encouraged to take a sincere, professional interest in students. However, professional ethics require that staff members avoid social situations through which they could exploit their positions of authority over students.

#### **5142 Child Abuse Reporting**

It is the responsibility of each and every HPREC staff member to report child abuse directly to the appropriate agencies as per state law in addition to informing the building administrator. The HPREC Executive Director and/or Director of Programs must also be notified.

#### **5143 Drug Free Schools and Campuses/Drug Free Workplace**

The purpose of this policy is to insure a drug-free environment for all staff members, to establish a drug awareness program for all personnel; to provide assurances to state and federal government agencies that the HPREC is complying with the requirements of the Drug-Free Workplace Act of 1988 and the Drug-Free Schools and Communities Act of 1986, as amended in 1989, and all regulations promulgated thereunder; and to declare that HPREC shall make a

good faith effort to maintain a drug-free workplace through implementation of this policy.

1. No staff member or contractor engaged by HPREC shall unlawfully manufacture, distribute, dispense, possess, or use alcohol or controlled substances in the workplace.

Compliance with this policy is mandatory; violation of this prohibition may result in termination of employment with the HPREC or another appropriate disciplinary action, including referral to law enforcement.

Any staff member who is convicted of a violation of a criminal drug statute occurring in the workplace shall, within five (5) days of the date of such conviction, notify his immediate supervisor in writing of such conviction. The HPREC, upon receiving such written notice, shall take one of the following actions within thirty (30) days:

- a. Impose appropriate personnel action against the staff member up to and including termination of employment; or
  - b. Require the staff member to participate satisfactorily in a drug abuse assistance counseling or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
2. Definitions:
    - a. Alcohol: All consumable non-prescription substances, which contain alcohol, specifically including, without limitation, spirits, wine, beer, malt beverages, and intoxicating liquors.
    - b. Drug: Marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamine; a metabolite of those drugs; or any nonprescription substance containing those drugs or any other controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act (21 VSC 812) and as further defined by Regulation 21 CFR 1300.11 through 1300.15.3.
    - c. Workplace. The site for the performance of work done in connection with employment, and shall include any place where work of the HPREC and its member districts and institutions is performed, including a school building or other premises, any school or HPREC owned vehicle or any other approved vehicle used to transport students for services and away from HPREC, school district or institutional property during any activity, event or function where students are under the supervision of the HPREC's staff members.
  3. Through this policy a drug awareness program shall be established within the HPREC to inform all staff members about:
    - a. The dangers of drug abuse in the workplace;
    - b. The HPREC policy of maintaining a drug-free workplace;
    - c. That assistance will be provided in finding counseling and rehabilitation programs for drug problems upon request from the staff member;
    - d. The penalties that may be imposed upon staff members for drug abuse violations occurring in the workplace.

4. Each staff member of the HPREC shall be given a copy of this policy and be notified that compliance with the terms of this policy is mandatory.
5. The HPREC shall make a good faith effort to maintain a drug-free workplace through implementation of this policy. The HPREC Council will review this policy annually to determine the program's effectiveness and implement changes as necessary. This review shall ensure that disciplinary sanctions are consistently enforced.

**5144 Reporting Procedures—Known/Suspected Student Alcohol/Drug Use**  
 Section 22-5-4.4 NASA 1978 Comp. requires that HPREC staff members who know or in good faith suspect any student of using or abusing alcohol or drugs shall report such use or abuse pursuant to procedures established by the Council. So long as such report is made in good faith, the reporting staff member shall be immune from any civil damage for his or her action. This policy is enacted to provide a procedure to be followed by all staff members in reporting known or suspected use or abuse of alcohol or drugs by students.<sup>7</sup>

1. **Duty to Report.** All staff members have a mandatory, non-discretionary duty to report known or suspected alcohol or drug use or abuse by any student of the participating districts.
2. **Administration To Whom Reports Should Be Made.** All reports made hereunder shall be on a uniform reporting form, available from the Executive Director and shall be given to the Executive Director.
3. **Timely Reporting.** Reports required hereunder shall be made within a reasonable time after the staff member first learns or suspects the use or abuse of drugs or alcohol by a student; in no case should the report be made later than five (5) days after the staff member has such knowledge.
4. **Duty to Investigate.** It is not the duty of the staff member making the required report to conduct an investigation to determine whether or not the student identified has in fact used or abused drugs or alcohol. The duty to investigate shall be upon the responsible Executive Director and responsible school official to whom the report is made; provided, however, that the reporting staff member shall cooperate with the responsible school official during the course of the investigation.
5. **Failure to Report.** The failure of any staff member to report knowledge or suspicion of student alcohol or drug abuse in a timely manner may be cause for discipline of the staff member.

**5145 Clean Indoor Air Act/Tobacco-Free Policy**  
 Pursuant to the New Mexico Clean Indoor Air Act (Sections 26-16-1, NMSA, 1978) smoking or the use of smokeless tobacco in any form is prohibited in any HPREC facility and by any HPREC staff member while providing services to or transporting students to or from any participating school district or institution. This policy will be enforced 24 hours a day, 7 days a week.<sup>8</sup>

<sup>7</sup> Legal Reference: 25-5-4.4 NMSA, 1978 Comp.

<sup>8</sup> Legal Reference: New Mexico Clean Indoor Act, 26-16-1 NMSA, 1978 Comp.

**5146 Exposure to Bloodborne Pathogens**

HPREC shall implement and enforce a comprehensive bloodborne pathogen Exposure Control Plan to ensure compliance with the Occupational Safety and Health Administration Safety Standards and for the safety and protection of its staff members and clients.

**5147 Hazard Communication/Right to Know**

**Policy.** The HPREC will maintain an effective "Hazard Communication Program" in accordance with the current New Mexico Occupational Health and Safety Act regulation 29 CFR 1910.1200. It is expected that all staff members of the HPREC fully cooperate and participate in this program.

**Purpose.** The above noted regulation sets forth "to ensure that the hazards of chemicals produced or imported by chemical manufacturers or importers are evaluated, and that information concerning their hazards is transmitted to affected employers, and staff members. The transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and staff member training."

This program, as well as the regulation is otherwise referred to as the "Right to Know Law", which in effect is designed to provide knowledge, warning, protection, and training to staff members who may be exposed to hazards of chemicals and other materials.

**Responsibility.**

1. The HPREC Council designates its Executive Director to have the prime responsibility for the administration of the "Hazard Communication Program"; the Executive Director will be the Hazard Communication Program Coordinator.
2. All staff members (staff, administrative, supervisory, therapists, support personnel) will fully participate in the program as it may apply to their work area and work responsibility.
3. The "Hazard Communications Program" will consist of five basic parts, which are:
  - a. Inventory and audit of hazardous chemicals and materials.
  - b. Labels and labeling of hazardous chemicals and materials containers.
  - c. Material safety data sheets (MSDS) maintenance, distribution, availability and locations.
  - d. Staff member training and information, general and specific.
  - e. A written "Hazard Communication Program" as herewith prescribed.
4. The written "Hazard Communication Program" for the HPREC with its associated inventory list, records, materials, etc., will be maintained in the HPREC business office. Staff members may review the program, MSDS and chemical listing at this location.

**Materials, Inventory, Audits.**

1. An initial inventory of all chemicals and materials will be made of all work areas and facilities. An annual audit will be conducted thereafter. All hazardous chemicals and materials required will be identified and listed. The listing will note at least the following information:
  - a. The name of the chemical.
  - b. The manufacturer or supplier.
  - c. The location(s) where the chemical or material is used.
  - d. The workers exposed.
2. A system will be maintained to add any newly introduced hazardous chemicals or materials to the listing.

**Material Safety Data Sheets (MSDS).**

1. A MSDS will be provided on all required chemicals and materials used in the HPREC.
2. There will be a Master MSDS File and index of all required chemicals and materials, which will be located in the HPREC business office.
3. The original inventory listing and audits will be used to ascertain that there is an MSDS as may be required for each chemical or material item and that all containers are properly labeled and stored.
4. In the event an MSDS is not available or should a new chemical or material be introduced for use without a required MSDS the Executive Director should be contacted immediately so that the matter may be corrected.

**Labels And Labeling.**

1. All hazardous chemicals or materials on hand or received must have a label, which must specify at least:
  - a. The chemical name.
  - b. Any specific warning or other hazard information.
  - c. Identification of the manufacturer or supplier and address.
2. A hazardous chemical or material label will not be removed from its container, nor will such label be defaced.
3. Should it become necessary for a label to either be introduced by the HPREC or replaced on a hazardous chemical or material container, such label will display the information noted in Paragraph 1 above.
4. All containers of hazardous chemicals or materials will be received, and the label assured to be affixed on each and all containers by individuals responsible for their individual areas; i.e., maintenance supervisor, office manager or any staff member who utilizes a hazardous substance as a part of their employment responsibilities.
5. It will be the responsibility of the staff member to ensure that all secondary containers are properly labeled with a duplicate of the manufacturer's label or an HPREC label as noted in Parts 1 and 5 above.

**Information & Training.**

1. All staff members will be informed of the "Hazard Communication Program" / "Right to Know Law" annually, and/or at the time of initial assignment and annually thereafter.

2. Staff members will sign a form or list that they attended a general or specific training session or received the HPREC's policy on Hazard Communication or received any technical or specific training relative to hazards of chemicals or materials.
3. General program information and training will be accomplished by lecture, photo slides, movie, video, literature or any combination thereof, and will cover the contents of this program to include a review of the following:
  - a. HPREC's policy statement.
  - b. The basic definition of the regulation.
  - c. Statement of responsibility, both program and staff member.
  - d. Information relating to labels and placards.
  - e. Description of MSDS and how to read all sections.
  - f. Location and availability of the written hazard communication program, MSDS's master and locations, and chemical listing.
  - g. Definition of hazardous chemicals or materials
    - i. Hazardous chemicals
    - ii. Health hazard
    - iii. Physical hazard
  - h. Steps the HPREC and staff members can take to lessen or prevent exposure to hazardous chemicals or materials, i.e., knowledge of chemicals, storage, posting, warnings, training, etc.
  - i. Methods and observation techniques used to determine the presence or release of hazardous chemicals or materials in a work area, i.e., flame or fire, smell or odor, fumes, itching, color, irritation, etc.
  - j. The emergency procedure to take in the event there is exposure to a hazardous chemical. (Immediately report to supervisor.)
  - k. Notice of hazardous chemicals or materials that are in a staff member's work areas.
4. Periodically, staff members may be required to perform non-routine work or tasks using hazardous chemicals, materials, or work in associated hazardous locations. Prior to starting such projects, each affected staff member will be given information about the chemicals, materials, or exposure of such activity. Such information will include:
  - a. Specific hazards that may be associated with the chemical or material.
  - b. Protective and other safety measures to be taken.
  - c. Measures HPREC is taking to lessen or prevent hazards, i.e., ventilation, storage, postings, fire extinguishers, etc.
  - d. Review of the chemical or material, MSDS or other technical information applicable.
  - e. Review of emergency procedures to be taken.

**Informing Contractors.**

1. It will be the responsibility of the Executive Director to provide contractors with the following information:
  - a. Any hazardous chemicals to which they may be exposed while on the job site.
  - b. Precautions and controls to be taken to lessen or prevent possible exposure by use of appropriate protective measures.
2. The Executive Director will also be responsible for contacting each and all contractors before work is started to gather and disseminate any information

concerning chemical hazards that the contractor may be bringing onto the work-site.

### **Program Maintenance - Other Functions.**

1. **Purchasing/MSDS Supply:** A boiler plate statement will be applied to any purchase orders for any potentially hazardous chemical substance:

"Suppliers must furnish a Material Safety Data Sheet applicable to any chemical substance on this purchase request which is potentially hazardous."

2. **Other supplied chemicals or materials:** No chemical or material requiring a MSDS will be introduced into the HPREC or any work area of the HPREC by petty cash purchase, supplier samples or other means without the knowledge of the Executive Director.

### **Hazard Definitions.<sup>9</sup>**

**Hazardous Chemical.** Means any chemical, which is a physical or health hazard.

**Health Hazard.** Means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed staff members. --includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, --agents which damage lungs, skin, eyes, or mucous membranes.

**Physical Hazards.** Means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, an explosive, flammable, or organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water reactive.

**Non-Msds Items.** Single use consumer products normally will not require an MSDS. This would apply to such items as a can of spray paint, nail polish remover, paint or gallon of latex paint, etc. However, should such items be supplied in large amounts and used in a regular process then an MSDS would be Required. This is a gray-line area and common sense application will have to be used. Think of amount and application plus hazard involvement, if any.

Likewise, FDA, FTA Agriculture and other government-controlled items do not have to have an MSDS. This would apply to foods and food products, cosmetics, drugs, tobacco products, fertilizer, insecticides, pesticides, liquors, etc.<sup>10</sup>

## **515 Employment Issues**

### **5151 Staff member Contracts**

All contracts or employment agreements with staff members shall be in writing and the salary shall be in accordance with Council approved salary schedules. The contract or employment agreement is to be signed by the Executive Director.

<sup>9</sup> Legal Reference: Federal Register/Vol. 3, No. 183, 8/24/87 Rules and Regulations /Pg. 31879.

<sup>10</sup> Legal Reference: New Mexico Occupational Health and Safety Act, Regulation 29 CFR 1910.1200

Written offer of employment by the Executive Director to the staff member shall constitute a contract, if written acceptance by the staff member is forwarded to the Executive Director within fifteen (15) days of receipt.<sup>11</sup>

Support staff with less than three years consecutive service for the HPREC are considered “at-will” staff members and will be proffered employment agreements instead of contracts.

#### **51510 Acceptance of Employment**

Each certified staff member shall deliver to the Council through the Executive Director a written acceptance or rejection of reemployment for the ensuing school year within fifteen days from the following:

- (1) The date written notice of reemployment is served upon the person; or
- (2) The last day of the school year when no written notice of reemployment or termination is served upon the person on or before the last day of the school year.

Delivery of the written acceptance of reemployment by the certified staff member creates a binding contract/agreement until the parties enter into a formal written employment contract/agreement. Written employment contracts/agreement shall be executed not later than ten days before the first day of the school year.

If the certified staff member does not indicate acceptance of reemployment within the fifteen days as outlined above, the Executive Director will consider that he has rejected the offer of reemployment and will declare his position open.

#### **5152 Salary Schedules**

On an annual basis, the Executive Director will prepare salary schedules for each staff member classification within the budgetary constraints of anticipated revenues for the review and approval of the Council. These schedules will form the basis for determining the annual salary of staff members.

Each staff member is responsible for verification of applicable training and experience. All verification of experience and training must be in the Executive Director’s office by September 15 in order to be counted on current year salary schedules.

Increments for experience may be granted upon the satisfactory completion of a year’s work; however, the Council reserves the right to refuse annual increments.

Prior experience in approved settings will be credited on the salary schedule as determined by the Executive Director. A full year’s experience will be credited on the salary schedule if approved by the Executive Director; fractional years of experience will be dropped if less than one-half year.

Daily rates are computed on the contract year.

<sup>11</sup> Legal Reference: 22-10-11 NMSA, 1979 Comp.

The maintenance and integrity of salary schedules is dependent upon adequate federal and/or state funding.<sup>12</sup>

### **5153 Recruitment and Applications**

The Executive Director, within the limits of its budget and the Council approved salary schedule, is committed to the policy of acquiring and retaining the most qualified personnel. Applications will be accepted on a year round basis. All applicants will become part of the applicant pool and given consideration in filling positions within the HPREC. Applicants will be screened based on information submitted and selected applicants will be invited for an interview. All applications are kept on file for one (1) year. Applications may be reactivated for an additional year by notifying the HPREC Executive Director in writing.

Applications, job descriptions and requirements, and salary schedules will be available in the HPREC personnel office.

### **5154 Hiring**

The Executive Director is responsible for making hiring decisions.

The Executive Director may issue such applicant a letter of intent. This letter will state that employment is subject to validation of the applicant's credentials, qualifications, criminal background checks, and other sources of information.

#### **51540 Conditions of Employment**

**Immigration Reform Act Requirements.** All persons employed on or after November 7, 1986, will be required to prove their legal right to work in the United States as required by the United States Immigration and Control Act of 1986.

**Certificate of Examination.** Personnel employed by the HPREC will be required to have a Certificate of Examination (Mantoux skin test for tuberculosis showing negative results) completed and placed on file in the personnel office at the time of employment. Valid certificates are transferable between HPREC's and public school districts in New Mexico.

**Functional Capacity Evaluation – Post Offer.** After an offer of employment has been made, any applicant selected for a position may be required to complete a functional capacity evaluation to determine their ability to perform job-related functions and their fitness for duty. The functional capacity evaluation will be conducted by a medical professional selected by the HPREC. The employment contract and commencement of work will be contingent upon the results of the evaluation. The cost for this evaluation will be assumed by the HPREC.

**Staff Member's Statement of Health.** The HPREC will require all new staff members to complete and file with the HPREC a "Staff member's Statement of Health" to determine pre-existing impairment(s) only after an offer of employment is made. If deemed necessary, the new staff member may be asked to provide a physician's release.

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<sup>12</sup> Legal Reference: 22-10-7 NMSA, 1978 Comp.

### **51541 Health Requirements**

Communicable Diseases. Any staff member who is infected with any acute communicable disease dangerous to the public health shall absent themselves from employment activities during the prescribed period of recovery.

When a staff member is identified as having a chronic communicable disease such as HIV, AIDS, Hepatitis B Carrier, etc., the HPREC will seek to accommodate the staff member's medical condition while maintaining a safe and healthy environment for students and other staff members. Decisions in all situations will be made on a case-by-case determination, based on the medical facts of each, and with concern for the best interests of all involved. A team of qualified physicians, including the physician of the staff member, will be impaneled by the HPREC to evaluate each case.

**Medical Examination.** If at any time there is a question as to the ability of a HPREC staff member to perform job related functions consistent with business necessity, the HPREC will require a complete physical examination by a HPREC-appointed doctor to be paid by the HPREC.

The Equal Employment Opportunity Commission has identified four situations under which a medical examination or inquiry will be considered job-related and consistent with business necessity and, therefore, permissible:

- a. When a staff member wishes to return to work following an absence due to illness or injury. An examination may be conducted to determine if the staff member, with reasonable accommodation, can safely and effectively perform the essential functions of the job.
- b. When a staff member requests an accommodation. If a staff member requests an accommodation on the basis on a claimed disability, an examination may be conducted to determine if the staff member is an "individual with a disability" to who a duty of accommodation is owed and, if so, to help identify potential accommodations.
- c. When an examination is required by federal law. Medical examinations or monitoring is required under certain circumstances by regulations issued by the Department of Transportation and the Occupational Safety and Health Administration.
- d. The HPREC may conduct voluntary medical examinations as part of a staff member health or "wellness" program. All information obtained through medical inquiries or examinations must be treated as confidential staff member medical files, separate from other personnel information about the staff member.

### **5155 Suspension**

A staff member may be suspended from duty pending the outcome of a hearing or the investigation of charges, such suspensions to be made by the Executive Director in accordance with the rights of the individual and the due process procedure.

## **5156 Re-employment/Termination Decisions**

**Re-Employment Decisions.** Re-employment decisions regarding certified and non-certified staff members with three years of consecutive service with the HPREC will be in compliance with state statutes and State Board of Education regulations.

On or before the fourteenth calendar day prior to the last day of the HPREC year, the Executive Director will serve written notice of re-employment or termination on each certified staff member employed.. A notice of re-employment shall be an offer of employment for the ensuing school year. A notice of termination shall be a notice of intention not to re-employ for the ensuing school year. Failure of the Executive Director to serve a written note of re-employment or termination on a certified staff member shall be construed to mean notice of re-employment has been served upon the person according to the terms of the existing employment contract, but subject to any additional compensation allowed other certified staff member of like qualifications and experience employed by the HPREC.

### **Termination Procedures.**

1. The Executive Director may terminate a staff member with fewer than three years of consecutive service for any reason it deems sufficient. Upon request of the staff member, the Executive Director shall provide written reasons for the decision to terminate. The reasons shall be provided within ten working days of the request. The reasons shall not be publicly disclosed by the Executive Director.. The reasons shall not provide a basis for contesting the decision under the School Personnel Act.<sup>13</sup>
2. Before terminating a non-certified school staff member, the Executive Director will serve the staff member with a written notice of termination.
3. A staff member who has been employed by the HPREC for three consecutive years and who receives a notice of termination pursuant to either Section 22-10-12 NMSA 1978 or 22-10-14 NMSA 1978, may request an opportunity to make a statement to the Council on the decision to terminate him by submitting a written request to the Executive Director within five working days from the date written notice of termination is served upon him. The staff member may also request in writing the reasons for the action to terminate him. The Executive Director shall provide written reasons for the notice of termination to the staff member within five working days from the date the written request for a meeting and the written request for the reasons were received by him. Neither the Executive Director nor the Council shall publicly disclose its reason for termination.
4. The Executive Director may not terminate a staff member who has been employed by the HPREC for three consecutive years without just cause.
5. The staff member's request pursuant to Subsection 3 of this section shall be granted if he responds to the Executive Director's written reasons as provided in Subsection 3 by submitting in writing to the Executive Director a contention

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<sup>13</sup> Legal Reference: 22-10-14A NMSA, 1978 Comp.

that the decision to terminate him was made without just cause. The written contention shall specify the grounds on which it is contended that the decision was without just cause and shall include a statement of the facts that the staff member believes support his contention. This written statement shall be submitted within ten working days from the date the staff member receives the written reasons from the Executive Director. The submission of this statement constitutes representation on the part of the staff member that he can support his contentions and an acknowledgement that the Council may offer the causes for its decision and any relevant data in its possession in rebuttal of his contentions.

6. The Council shall meet to hear the staff member's statement in no less than five or more than fifteen working days after the Council receives the statement. The hearing shall be conducted informally in accordance with the provisions of the Open Meetings Act.<sup>14</sup> The staff member and the Executive Director may each be accompanied by a person of his choice. First, the Executive Director shall present the factual basis for his determination that just cause exists for the termination of the staff member, limited to those reasons provided to the staff member pursuant to Subsection 3. Then, the staff member shall present his contentions, limited to those grounds specified in Subsection 5. The Council may offer such rebuttal testimony as it deems relevant. All witnesses may be questioned by the Council, the staff member or his representative and the Executive Director or his representative. The Council may consider only such evidence as is presented at the hearing and need consider only such evidence as it considers reliable. No record shall be made of the proceeding. The Council shall notify the staff member and the Executive Director of its decision in writing within five working days from the conclusion of the meeting.

"At-will" Staff Members

Non-licensed staff with less than three (3) years consecutive service is considered "at-will" staff members; if service becomes unsatisfactory, fifteen (15) days notice will be given before dismissal from employment.

**5157 Discharge During Term of Contract – Certified Staff member Definitions.**

**Discharge.** The act of severing the employment relationship with a staff member prior to the expiration of the current employment contract.

**Just Cause.** A reason that is rationally related to a staff member's competence or turpitude or the proper performance of their duties and that is not in violation of the staff member's civil or constitutional rights.

1. The Executive Director may discharge a certified staff member only for just cause according to the following procedure:

<sup>14</sup> Legal Reference: Chapter 10, Article 15 NMSA 1978.

- a. The Executive Director shall serve written notice of intent to recommend discharge on the certified staff member in accordance with the law for service of process in civil actions; and
  - b. The Executive Director shall state in the notice of intent to recommend discharge the cause for the recommendation and shall advise the certified staff member of his right to a discharge hearing before the Council.
2. A certified staff member who receives a notice of intent to discharge in accordance with Paragraph A may exercise his right to a hearing before the Council by submitting to the Executive Director written notice of that election within five (5) working days of receipt of the notice to recommend discharge.
  3. The Council shall hold a discharge hearing no less than twenty (20) and no more than forty (40) working days after the Executive Director receives the written election from the licensed staff member and shall give the certified staff member at least ten (10) days written notice of the date, time, and place of the discharge hearing.
  4. Each party, the Executive Director and the certified staff member, may be accompanied by a person of his choice.
  5. The parties shall complete and respond to discovery by deposition and production of documents prior to the discharge hearing.
  6. The Council shall have the authority to issue subpoenas for the attendance of witnesses and to produce books, records, documents, and other evidence at the request of either party and shall have the power to administer oaths.
  7. The Executive Director shall have the burden of proving by a preponderance of the evidence that, at the time of the notice to recommend discharge, there was just cause to discharge the certified staff member.
  8. The Executive Director shall present evidence first, with the certified staff member presenting evidence thereafter. The Council shall permit either party to call, examine, and cross-examine witnesses and to introduce documentary evidence.
  9. An official record shall be made of the hearing. Either party may have one copy of the record at the expense of the Council.
  10. The Council shall render its written decision with twenty (20) days of the conclusion of the discharge hearing.

Appeals –When an appeal is filed as provided in 22-10-17.1, the Council will follow the procedures required by the statute in 22-10-17.A-N.<sup>15</sup>

#### **5158 Reduction-in-Force (RIF)**

1. **Authority** Pursuant to NMSA 1978 § 22-5-14 (2003), the Executive Director has the authority to discharge licensed personnel during the term of their contracts or to terminate licensed and non-licensed staff members with rights created by NMSA 1978, Section 22-10A-24(C) (hereafter “tenured staff members”), after notice and a hearing when a reduction in such personnel is required as a result of circumstances justifying a reduction in force as specified herein. Reduction-in-force (RIF) is “just cause” for discharge of licensed staff members and terminations of tenured staff members, when established pursuant to this policy. This policy is adopted as the procedure by

<sup>15</sup> Legal Reference: 22-10-14, 22-10-17.1(A-N) NMSA, 1978 Comp.

which reductions in personnel who are covered by the policy may be accomplished, within the context of the HPREC's general personnel policies.

2. **Council Discretion** The Council is vested with the discretion to develop educational policies for HPREC, so long as the state educational standards and statutorily-required standards are met. The Executive Director, in carrying out the educational policies of the Council and administering and supervising the HPREC, shall exercise his/her discretion in accordance with this policy in determining when decreased enrollment, financial exigency or other caused justify a reduction in personnel.
3. **Grounds Justifying Reduction in Force** Situations that justify a RIF shall include, but are not limited to, the following:
  - a. Decrease in district enrollment or reduced district demand for or participation in programs or services;
  - b. Decrease in revenue:
    1. Because decrease of district enrollment;
    2. Because of loss or reduction of tax revenues;
    3. Because of reduction of state, local, or federal financial support; or
    4. Because of inflation reducing the value of revenues received or significantly increasing costs of operation;
  - c. Change in the educational program of the member districts, as determined by the Council, in its good-faith exercise of discretion;
  - d. Consolidation or de-consolidation involving the HPREC;
  - e. Court orders;
  - f. Orders of the Secretary of Education;
  - g. Legislative mandates;
  - h. Unanticipated financial or programmatic exigencies identified by the Executive Director which warrants initiation of a RIF process.
4. **Good Faith Determination** The Executive Director shall exercise discretion in good faith, and determinations that a RIF is necessary shall be based on bona fide educational considerations, and shall not be a subterfuge for discharging or terminating licensed personnel without just cause or for impermissible reasons.
5. **Timing of Reduction in Force** A RIF may occur at any time during the calendar year when the Executive Director, in his/her discretion, determines that it is justified and the procedures prescribed herein are applicable and are followed. A RIF may be based upon projections of future enrollment, revenues or expenses, and the subsequent receipt of more revenue than expected or a subsequent saving of projected expenses shall not invalidate any actions previously taken in good-faith reliance on such projections, nor shall it require the reemployment of any employees who were release on the basis of such projections.
6. **Determination of Need for Reduction in Force** Except as required by legislative mandate or orders of the State Secretary of Education and to the extent that circumstances permit, the Executive Director, with the assistance

of the administrative staff, shall report to the Council any circumstances which may ultimately require a RIF and so that consideration be given to means by which a RIF may be avoided. Preparation of RIF plan shall not be necessary if the reductions can be accomplished through attrition (i.e., resignations, retirements, etc.), or by termination of a sufficient number of non-tenured staff.

**a. Preparation of RIF Plan** When the Executive Director concludes that a RIF is necessary, a plan for RIF shall be developed for presentation to the Council. The RIF plan shall not identify individuals to be discharged or terminated, but rather shall focus upon the total operations of the HPREC and how it may be modified to reduce costs, programs and personnel while still providing the services required of school districts. Where circumstances warrant, a RIF plan may address particular programs, departments, content areas or activities if the causes for the RIF predominately impact that aspect of the educational program. Such impact shall be described in the RIF plan. The RIF plan shall include, but need not be limited to the following:

1. A detailed description of the cause or causes requiring a RIF;
2. A description of all adjustments already made by the Executive Director in an attempt to avoid a RIF, if any (e.g., reduction by attrition, cuts in non-licensed staff, abolition of non-essential services or activities, etc.)
3. A designation of the part or parts of the total operation or particular program or activity in which the RIF is proposed and the number of positions proposed to be reduced in each program or activity;
4. A designation of non-essential services or activities which are to be retained, with a justification for retaining such programs; and
5. A discussion of alternatives (if any) considered by the Executive Director with an explanation as to why such alternatives were rejected.

The Executive Director shall include in the RIF plan a listing of all programs or services which may be considered for rating points in the proposed RIF rating sheet and the proposed weight to be given each category of such programs or activities for discussion at the public meeting at which the RIF plan is considered.

**b. Council Considerations** The Council shall consider the recommendations of the Executive Director for the adoption of the RIF plan at a duly-called Council meeting, the public notice of which announces that a RIF will be considered. The discussion and action on the plan shall be in open session; however, nothing herein shall restrict the Council from holding portions of those discussions in closed session, if such discussion would be proper under the New Mexico Open Meetings

Act. The Council may allow such review, consultation, and comment by staff members and members of the public, as the Council, in its discretion, deems appropriate, provided that the Executive Director shall be the final decision-maker on the content and scope of the plan after giving due consideration to the Council's proposals.

If a mid-year RIF is proposed which would require the discharge of tenured certified staff, the Executive Director and Council shall adopt a joint determination that as to the projected financial burdens to the HPREC in the future and concluding the HPREC cannot survive financially for the fiscal year already underway, if the RIF is not carried out.

Any final plan for a RIF shall be made available to all staff, by providing copies thereof in the office of the Executive Director's office, within two (2) working days after the final plan has been approved by the Executive Director.

- c. **Adopted Plan** If a RIF plan is adopted, the Council shall not be required to deplete its operational cash balances maintained or carried over as permitted by NMSA 1978 § 22-8-41C and Section 71, Laws 2003, Ch. 153 in order to avoid the RIF, if the Council, in its discretion, determines that the cash balance must be maintained at the level determined by the Council, in order to cover other permitted expenditures or as a contingency for unforeseen expenditures of emergencies.

Based upon the RIF plan approved by the Council, the Executive Director shall perform a study of HPREC's personnel to determine which person or persons must be wholly or partially terminated or discharged in order to implement the plan. The primary concern to be applied in making the RIF selections shall be the Council's interest in maintaining a sound and balanced operation which meets state and federal or regulatory requirements or standards, as well as the educational and extracurricular program established for the HPREC. In performing the study, the Executive Director shall prepare a rating sheet and apply a point scale using the criteria applicable to the affected personnel specified in the following section.

## 7. Criteria for Selection of Employees for RIF

### a. Licensed Personnel

#### 1. Licensing as Qualification/Substandard Licenses

Substandard licensure is inferior to full licensure, and a person who is fully licensed to provide services within the presently assigned content area shall be retained in preference to a person holding a substandard license.

- a. A person holding a "waiver" of licensure requirements approved by the Public Education Department (per NMSA 1978 Section 22-10A-14B) shall be treated as having substandard licensure for the

purpose of this policy, and shall receive zero (0) points for licensure in the survey and on the rating sheet.

- b. A licensed person working in the affected service area pursuant to an “assignment waiver” (per NMSA 1978 Section 22-10A-14C), but possessing full licensing in another content area not affected by the RIF shall be allocated five (5) points on the rating sheet.
- c. A person who is fully licensed and teaching in the affected content area shall be allocated ten (10) points on the rating sheet.

## 2. **Endorsements**

Licensed personnel possessing endorsements and/or certifications recognized by the Public Education Department beyond those requested or required as qualifications for the individual’s current assignment of content area shall receive an additional two (2) points per current valid endorsement, up to a maximum of six (6) points.

## 3. **Extracurricular Licensing/Experience/Assignment**

The Council shall also possess the discretion to grant up to, but no more than, three(3) points for current co-curricular assignments, requiring specialized knowledge, training, expertise, or significant time commitment, but for which licensing is not available, in programs or services which the Council has determined to retain as an integral part of its overall program.

No employee may receive in excess of ten (10) total points on the rating sheet for co-curricular assignments. The Administration shall include in the proposed RIF Plan a listing of all co-curricular programs or activities which may be considered for rating points in the proposed RIF rating sheet and the proposed weight to be given to each category of such programs or activities for discussion at the Council meeting at which the RIF Plan is considered.

## 4. **Service in HPREC**

Where cumulative scores on the rating sheet are equal between two or more licensed staff members being considered for termination or discharge, tenured licensed staff members shall be retained in preference to licensed staff members who have been employed by HPREC for less than three consecutive school years of service.

- a. Each licensed individual considered for termination or discharge shall be awarded one (1) point for each year of full time service during the most recent period uninterrupted service with HPREC, prior to the current year, excluding approved extended leaves of absence, up to a maximum of twenty (20) points.

5. **Education**

The amount of credit for education shall be determined based on degree and additional hours:

- |                     |           |
|---------------------|-----------|
| 1. B.A.             | 1 point   |
| 2. B.A. +15         | 2 points  |
| 3. B.A. +45 or M.A. | 4 points  |
| 4. M.A.+15          | 6 points  |
| 5. M.A.+45 & higher | 8 points  |
| 6. Ed.D. & Ph.D.    | 10 points |

6. **Performance:** [Optional-The Executive Director shall determine whether this criterion shall be used at the time the RIF Plan is approved.]

The current supervisor of each licensed staff member considered for termination or each licensed person considered for discharge shall rate the relative performance of each such person on a rating form to be prepared by the Executive Director, or under his/her direction. Such rating form may be based on HPREC's standard evaluation form(s) rating competencies but may include additional competencies identified by the Executive Director which reflect his or her judgment as to the attributes necessary for success in the particular program(s) affected by a RIF. The rating form shall include not more than a total of ten (10) standard and specific competency areas, shall specify the score for each performance category or attribute, and shall allow for a maximum score of twenty (20) points. The supervisor(s) may consult with the Executive Director within the time specified for completion of the evaluations.

If different individuals considered for a RIF have different supervisors, the supervisors may consult with each other and/or with the Executive Director to insure that the rating system is applied uniformly. There shall be no requirement of observation of performance by a supervisor specifically for the purpose of completing the rating form; however, each supervisor shall review prior evaluations of the individuals considered for RIF, if available. If a supervisor lacks familiarity with an individual's performance (e.g. a new supervisor), the Executive Director may assign the evaluation to a supervisor who has greater familiarity with the individual's performance. The Executive Director may devise such other measures as he or she deems necessary to address with situations where implementation of the performance rating cannot occur in the normal manner, so long as such measures are rationally designed to award points to licensed personnel based on the employee's performance.

b. **Selection Based on Score**

The Executive Director shall total the points allocated based on the criteria specified above. The person with the lowest score shall be the person who is released by termination or discharge unless such action

would have a serious and detrimental effect on the total education program. In such event, the Executive Director may select a higher scoring person for termination or discharge but shall prepare a written justification for such action in the best interests of HPREC, along with the rating sheets for such positions. The computations of the Executive Director, plus the rating forms on the persons considered for release, shall be available for review by the person released.

**c. Transfer/Reassignment**

If, as a result of the application of the selection criteria, a person is selected to be released from the affected program, but such person (“the affected person”) is also licensed and qualified for another program(s) within HPREC, the person shall be considered for transfer or reassignment to such program(s). The fact that there are one or more other licensed staff members within the program affected by the RIF who scored higher than the affected person, and that such person(s) may be licensed and qualified to work in other programs in HPREC, shall not require that the higher scoring persons be transferred or reassigned to the other program or programs, even if there is a vacancy in the other program or programs. The transfer/reassignment obligation shall not arise until after the selection of the person or persons to be released from the program affected by the RIF and shall only apply to the person or persons selected for release. Consideration of transfer or reassignment of the affected person shall be governed by the following criteria:

1. Existing Vacancy. If, upon the effective date of the termination or discharge due to a RIF, there is an existing vacancy in another program for which the affected person is licensed and qualified, he or she shall be transferred or reassigned to that vacant position. There shall be no obligation to create a vacancy to accommodate such person.
2. No Existing Vacancy. Where the affected person is licensed and qualified for another program or programs in HPREC, but all such positions are currently filled, the selection criteria described above, subject to the modifications described below, shall be applied to determine whether the affected person will be transferred or reassigned to another program and another person, currently employed in the other program, shall be released.
  - a. If the person fully licensed for a position in another program or an administrative position but has not actually performed services in such program or held such a position during any part of the preceding five (5) years, such person shall not be considered qualified for transfer or reassignment to the other position.
  - b. If the Executive Director has not observed the person being considered for transfer or reassignment performing the duties of

the other program, it is impractical for the relative performance of the person being considered for transfer or reassignment and the person or persons currently working in the program to be rated based on direct observation. Under such circumstances, the Executive Director or his/her designee shall make a judgment as to the likely performance of the person being considered for transfer or reassignment and assign the performance score that may be used in the selection process in comparison to the person or persons currently employed in the other program. The Executive Director or Director of Programs shall consider the affected person's performance in other programs and his/her knowledge of all people in the program in question in making the judgment, and may consult with other knowledgeable person in making this determination.

Each licensed staff member discharged and each tenured staff member terminated pursuant to this policy shall be entitled to the procedural rights provided under the applicable statutes and regulations of the State Secretary of Education governing discharge of licensed personnel of the termination of tenured staff members. The written decision of the Executive Director, to the extent required by statute and regulation, shall clearly specify that the termination or discharge resulted from a RIF and not from any cause personal to the person released.

**d. Non-Licensed Personnel**

Seniority shall be the primary criterion in determining which non-certified personnel shall be recommended for complete or partial termination in order to implement the RIF Plan. More senior non-certified personnel ordinarily shall be retained in preference to less senior non-certified personnel within the same job category. However, where multiple positions and programs are affected by the RIF, the Executive Director may prepare a rating sheet which includes the following criteria in making the selection:

1. **Specialized Qualification/Licenses:** Specialized training/certification or licensing directly related to the current job duties of the non-certified employee (e.g. electrician's license held by maintenance employee) may be allocated up to, but no more than, five (5) points.
2. **Service in HPREC:** Each noncertified employee rated shall be awarded one (1) point for each complete year of full-time service during the most recent period of uninterrupted service with HPREC, up to a maximum of twenty (20) points. Periods of extended leave of absence without pay shall not be included. Where cumulative scores are equal, tenured, noncertified individuals (those who have completed three (3) full consecutive years of service in HPREC) shall be retained over non-tenured, noncertified individuals.

3. **Performance: (Optional ~ to be used only if directly by Executive Director).** If two or more individuals have equal ratings on the above criteria, the current supervisor of each person classified as support staff who is considered for termination shall rate the relative performance of such person on a rating form to be prepared by the Executive Director. Such rating form will be designed based on HPREC's performance evaluation form for non-certified employees. The rating form will allow for a maximum score of twenty (20) points. The forms will be returned to the Executive Director for tabulation.
  4. **Selection Based on Scores:** The Executive Director shall total the points for service and performance. The person with the lowest score shall be the person who is released. The computations of the Executive Director, plus the rating forms on the persons considered for release, shall be available for review by the person released.
  5. **Transfer / Reassignments:** If, as a result of the application of the selection criteria, a person is selected to be released from the affected program, but such person is tenured and qualified for another program within HPREC in which a vacancy exists, that person shall be considered for transfer/reassignment to the other program.
  6. **Termination:** Each non-licensed employee terminated pursuant to this policy shall be entitled to the procedural rights provided under the applicable New Mexico statutes and regulations governing the termination of non-licensed personnel. The written decision of the Council, to the extent required by statute and regulation, shall clearly specify that the termination resulted from a R.I.F. and not from any cause personal to the person released.
- e. **Appeal**  
Appeals to an independent arbitrator from termination or discharge pursuant to this policy are governed by the provisions of NMSA 1978, Section 22-10A-25, NMSA 1978 22-10A-28, respectively, and any applicable regulations of the State Secretary of Education.
- f. **Recall of Released Staff**  
For a period of one (1) year after the effective date of the discharge or termination of any employee pursuant to this policy, the Executive Director shall offer to such person any position(s) which become available for which such person is licensed and qualified, provided that such person has complied with the requirements specified below.
- a. Every person discharged or terminated under this policy who wishes to be considered for recall, in the event that an opening occurs, must file with the Executive Director, within thirty (30) days after the effective date of the discharge or termination, a written statement indicating a desire to be considered for recall and providing an

address at which the person may be contacted. Such person must notify the Executive Director of any change in address within ten (10) days after changing residences in order to insure proper notification in the event of a recall.

- b. In the event that more than one interested person who was discharged or terminated within the calendar year prior to recall is qualified for the position by experience, training, and/or licensure to which a person will be recalled, the selection criteria of this policy will be applied to determine which person is to be recalled. The points accrued for "Service" and "Performance" shall be the same as when the persons were discharged or terminated, but additional points for any additional education earned after the discharge or termination which is directly related to HPREC's operations shall be credited and considered.
- c. Any person selected for recall hereunder shall receive written notification of the recall, by certified mail, at the address provided. The recalled person must accept the position offered through recall in writing. Such acceptance must be received in the Executive Director's office within fifteen (15) calendar days after mailing of the recall notice to the person. Rejection of the offer, in writing or by failure to timely respond, shall result in forfeiture by the recalled person of any further recall rights under this policy. Thereafter, an offer of recall will be made to the next person qualified to be recalled, or if there is none, the position will be filled by another qualified applicant.
- d. Any person recalled pursuant to this policy shall have all accrued but unused sick leave restored and is given credit for all years of actual service in HPREC for salary purposes.
- e. After the one (1) year recall period has expired, any person discharged or terminated under this policy shall no longer have any right to be recalled. Such persons who wish to be reemployed thereafter shall file applications for employment and will be treated as would any other applicant for a vacant position.

In event legislation is passed which requires the Executive Director to reduce licensed personnel, for any reason, the Executive Director shall follow the legislative procedures, if any, in lieu of this policy.

#### **5159 Resignation**

Certified staff members shall file a written notice of resignation with the Executive Director thirty (30) days prior to the effective date of resignation. Failure to do so may result in a complaint being filed against the staff member's license with the New Mexico Public Education Department.

Non-certified staff is required to give fifteen (15) days notice.

The Executive Director may waive the period of time due to extenuating circumstances.

**516 Work Requirements**

**5160 Work Day/Year**

**Work Year.** The work year for twelve month (261-days) staff members will begin on July 1 and end June 30. The work year for related service personnel (172-days) staff members will be documented on the Council approved salary schedule.

The yearly calendar will indicate days to be worked for school year staff members and staff member contracts will reflect the number of days of contract.

**Work Day.** Length of work day and schedule of hours of work for all staff members shall be determined by the Executive Director.

HPREC staff assigned to school districts will follow the assigned school district's staff hours for reporting time, lunch time and departing time. HPREC staff assigned to the office will follow hours established for that office by the Executive Director.

**Time Accountability.** Each staff member assigned to school districts must turn in to the payroll office time sheets/accountability sheets (i.e., Task and Travel Logs) signed by either his supervisor or appropriate district personnel, as per HPREC official calendar. Failure to submit completed task and Travel Logs will result in the issuance of manual payroll checks and may result in disciplinary action.

Time sheets for office personnel shall be approved and signed by the Executive Director.

**5161 Assignment/Duty Station**

Staff members shall be assigned by the Executive Director, in consultation with the Director of Programs, to such duty and location as may be in the best interest of the school districts and students served.

All ancillary staff will have an assigned duty station for the school year.

**5162 Overtime**

The Fair Labor Standards Act will be followed in regard to overtime payment or compensatory time allowance for support personnel as delineated in administrative regulations.

**5163 Extra Duty**

The HPREC Director of Programs will inform staff members of after school hours activities which they are expected to attend. The coordinator will make all assignments on an equitable basis.

**5164 Supervision and Evaluation**

The Executive Director shall be responsible for designing and implementing an effective personnel supervision program in compliance with the New Mexico

Staff. Accountability Plan and SBE Regulation 89-6.<sup>16</sup> The goal of the staff evaluation plan is the improvement and development of staff.

Staff evaluations (both summative and formative) will be accomplished according to the HPREC Evaluation Handbook.

#### **5165 Staff Meetings**

All members of the licensed staff must attend:

1. The pre-opening school workshops and all in-service activities indicated on the HPREC official calendar. Appropriate deductions for non-attendance will be made or the staff member may use sick leave if ill.
2. All staff meetings called by the Executive Director or Director of Programs unless excused by the Executive Director.

#### **517 Professional Organizations**

Membership in all professional associations is voluntary. Professional association activities shall not interfere with a staff member's accepted responsibilities to the HPREC.

#### **518 Discipline**

Progressive discipline shall be used whenever appropriate. Progressive discipline can range from a reminder, to an oral or written reprimand, to a suspension or dismissal. There are instances when a disciplinary action, including dismissal, is appropriate without first having imposed a less severe form of discipline.

Employment at HPREC carries a responsibility for each member of the staff to comply with established policies and ethical behavior at all times. Since rules are of utmost importance, staff members will be expected to familiarize themselves with them and to observe them all.

Rules and regulations have been established to protect the welfare of HPREC, its clients and staff members, and to maintain its professional image to the public. Violation of these rules may result in corrective action, which takes the following points into consideration:

1. All corrective action shall be fair and impartial, and shall conform to all applicable Equal Employment Opportunity laws.
2. Effort will be made to obtain all the facts before any action is taken.
3. The corrective action may be a verbal warning, written warning, suspension, or dismissal - in progressive stages or a single action - depending upon the facts and circumstances in relation to HPREC policy and practices. All corrective actions shall be reviewed and approved by the Executive Director. Copies of all counseling and warnings should bear the staff member's signature indicating that the staff member is aware of the action. Signature does not necessarily signify agreement or admission of the action. If the staff member refuses to sign, the Executive Director and/or Director of Programs should initial the action confirming the employee's verbal refusal.

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<sup>16</sup> Legal Reference: SBE Regulation 89-6.

4. The purpose of any corrective action is to correct the action and/or reinforce adherence to the rules. Should a staff member continue the violation, corrective action will follow depending on the severity of the infraction.