



# **Employee Handbook**

## **2022-2023**

**EL CAMINO REAL ACADEMY  
EMPLOYEE HANDBOOK  
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**EL CAMINO REAL ACADEMY**  
**EMPLOYEE HANDBOOK**  
2022 Edition

Welcome to El Camino Real Academy (ECRA). The Governing Council and Administration congratulates you on your decision to join us. We trust that this decision will prove beneficial to you, ECRA and the families and students we serve. We want you to be informed about the many benefits and services provided to the employees of ECRA.

The information in this handbook is important to all staff at ECRA. Read the manual now and keep it in a convenient place. You will want to refer to your handbook when you have questions about school policies and benefits. However, this document is informational only, it is not an attempt to provide a complete reference to the law, employee rights or the regulations of the New Mexico Public Education Department, or, if applicable, to the policies of El Camino Real Academy. If specific questions arise, we urge you to discuss those inquiries with the appropriate administrative staff.

This School, as all charter schools in New Mexico, is subject to the provisions contained in both federal law and certain laws of the State of New Mexico. Charter schools are bound by the same New Mexico health and safety, civil rights and student assessment requirements as other public schools. Additionally, ECRA is subject to the requirements of the compulsory education law and student performance standards adopted by the New Mexico Public Education Department. From time to time the need will arise for this school to amend, modify, rescind, delete, supplement or add to the provisions of this handbook as law and regulations dictate. In addition, administrative policies may be made by the ECRA Governing Council. You are bound by these policies when you accept employment at ECRA. Every effort will be made to keep you informed of all changes to law, regulation and policies governing your employment. The Principal or designee will attempt to provide you with notification of any other changes as they occur.

No policy contained in this handbook can be inconsistent with federal or applicable state law. Additionally, this School will be bound by all of the provisions contained in the New Mexico Charter School Act and, where applicable, the New Mexico Public School Code and implementing regulations.

## EMPLOYMENT

### **I. EMPLOYEE PROFESSIONAL CONDUCT.**

The mission of ECRA requires that all involved in the school work and develop relationships of collegiality. It is reasonable to insist on a high degree of mutual, professional and personal respect and a high level of mutual support.

We value teachers, staff and volunteers actively participating in discussions of decisions affecting them. The school values diversity in perspectives leading to a deeper understanding of organizational reality and an enriched knowledge base for decision making. The school values employees resolving conflict in a healthy way that leads to stronger solutions for complex issues. We value employees reflecting on their own and others' thinking in order to achieve better organizational decisions.

Genuine community requires respect for individual privacy. Among other things, this means a high degree of attention to confidentiality. As individuals within the community, we should share information about one another and our students on a judiciously defined need to know basis. If one needs to know something in order to carry out school responsibilities, one should know it; otherwise, the information should not be shared. To that end, all personnel matters, including those affecting you personally, should be treated with utmost confidentiality and professionalism.

ECRA emphasizes the extraordinary degree of care that employees (including volunteers) must take in maintaining the confidentiality of all school matters, including information about children and families as well as employees.

### **II. EQUAL EMPLOYMENT OPPORTUNITY POLICY.**

ECRA is an equal opportunity employer and will recruit, hire, train, and promote in all job titles without regard to race, color, religion, sex, national origin, age, physical or mental handicap, sexual orientation, or status as a disabled veteran or veteran of the Vietnam era.

ECRA will base employment decisions on principles of equal employment opportunity with the intent of furthering ECRA's general goals expressed in its Mission. This policy governs all aspects of employment at ECRA including hiring, assignments, training, promotion, upgrading, demotion, downgrading, transfer, lay-off, termination, compensation, employee benefits, discipline and other terms and conditions of employment.

If you believe that you have been denied an employment opportunity based on your race, religion, sex, national origin, age, physical or mental handicap, sexual orientation or status as a veteran, notify the Principal (or designee) immediately.

**A. No Tolerance Harassment Policy.** ECRA is committed to creating a workplace free of discrimination and harassment for any reason, but in particular for reasons based on race, color, religion, age, sex, national origin, sexual orientation, physical or mental disability, status as a veteran, or any other basis protected by federal, state or local law. This prohibition applies in your relationships with all other employees, students, parents and guardians, visitors and guests. All employees of

ECRA are responsible for taking appropriate action to prevent and eliminate harassment and discrimination at ECRA pursuant to the procedures set forth in this handbook. Likewise, ECRA will not tolerate retaliation or reprisals of any type against any employee who complains of harassment or provides information in connection with any such complaint. Harassment is considered to be misconduct and grounds for disciplinary action, up to and including discharge.

**B. Sexual Harassment.** As sexual harassment raises issues about human interaction that are to some extent unique, the subject of sexual harassment is treated separately here. ECRA prohibits sexual harassment at any time of any employee, student, parent or guardian, visitor, guest, candidate for employment or other person visiting the School's premises. Sexual harassment is a form of sex discrimination in violation of federal and state law. It includes:

- requests for sexual favors,
- sexually motivated physical contact,
- other verbal or physical conduct when submission to such conduct is either explicitly or implicitly made a term or condition of employment, or submission to or rejection of such conduct is used as the basis for employment decisions,
- conduct that has the purpose or effect of unreasonably interfering with an individual's work environment,
- intimidation and hostility directed to an individual because of sex or sexual orientation,
- explicit or degrading verbal, written or electronic comments of a sexual nature, or
- persistent or unwelcome flirtation or requests for dates, especially if the behavior continues after a clear objection has been made.

This list is not exhaustive and applies to conduct by co-workers, supervisors, volunteers and others invited to the school premises. Sexual harassment can apply to conduct in any work-related setting **outside** the work place as well. It is not permissible for any ECRA employee to engage in any form of sexual harassment. ECRA will do its best to keep its workplace free of any conduct which creates an intimidating, hostile, or offensive work environment.

Consensual sexual behavior between adults, outside the workplace and welcome by both parties is not considered sexual harassment; however, those who engage in such relationships should be aware that questions regarding the actual freedom of choice of one of the parties may be raised later, especially when a superior/subordinate relationship exists between them.

If you have asked the alleged harasser to stop to no avail, then you should report the incident to your supervisor. You may initiate the process outlined in paragraph F. below.

**C. Other Harassment.** Other prohibited harassment includes verbal or physical conduct which degrades or shows hostility or aversion toward an individual even partly because of race, color, religion/creed, gender, national origin, age, disability, citizenship, marital status, sexual orientation or other prohibited basis. Any such behavior that

interferes with the individual's work performance, or creates an intimidating, hostile or offensive work environment, does not belong in our workplace or in any work-related setting outside the workplace. The same prohibition applies in relationships to students, parents or guardians, visitors and guests. ECRA will not tolerate such behavior. If you believe that you are the subject of harassment, please follow the process outlined in section F. below.

**D. Employees with Disabilities and Reasonable Accommodations.** In 1990, Congress passed the Americans with Disabilities Act (ADA), a civil rights law prohibiting discrimination on the basis of disability in private and public organizations employing 15 or more employees. ADA gives protections to individuals similar to those provided by law on the basis of race, color, sex, national origin, age and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services and telecommunications.

**1. Who qualifies:** A person has a "disability" if he/she has a physical or mental impairment that substantially limits a major life activity. One may also be protected if he/she has a record of having a substantial (as opposed to a minor) impairment, or is *perceived* to have a substantial impairment. A substantial impairment is one that significantly limits or restricts a major life activity including: hearing, seeing, speaking, breathing, performing manual tasks, walking, learning, working, or caring for oneself. An employer may not discriminate against an applicant or employee, whether disabled or not, because of an individual's relationship or association with an individual with a disability.

**2. Reasonable accommodations:** ECRA, whenever possible, will provide a reasonable accommodation to persons with a disability. Disabled employees should make a written request for an accommodation where their physical or mental disability would prevent them from performing an essential function of their job. Written requests must be accompanied by documentation of the claimed disability and must be submitted to the Principal (or designee). ECRA may request additional documentation to evaluate a claimed disability, including medical and psychological and/or psychiatric records. Every accommodations request will be documented by the Principal. A copy of a request will be filed as a confidential record and will be kept separate from the employee personnel file. No disability records will be kept in personnel files. The Principal and Governing Council will make a timely formal response to a complete accommodations request. The employee making the request will, on one or more occasions, be asked to meet with the Principal to discuss what accommodations may or should be considered. Medical certification of the disability may also be requested. Whatever is decided during this interactive process will be documented.

**3. Retaliation:** ECRA cannot and will not retaliate against a job applicant or employee for asserting his/her rights under the Americans with Disabilities Act or other applicable laws protecting individuals with disabilities.

**E. Employees with Serious Diseases.** ECRA will not discriminate in employment decisions against individuals with infectious, long-term, life-threatening or other serious diseases as long as they are physically and mentally able to perform the



duties of their job without undue risk to their own health or that of other employees or students.

**1. “Serious disease” defined.** Serious diseases for the purposes of this policy include, but are not limited to, cancer, heart disease, multiple sclerosis, hepatitis, tuberculosis, human immunodeficiency virus (“HIV”) and acquired immune deficiency syndrome (“AIDS”).

**2. Non-discrimination policy.** Employees afflicted with a serious disease are to be treated no differently than any other employee. If the serious disease affects their ability to perform assigned duties, such employees are to be treated like other employees who have disabilities that limit their job performance. Reasonable accommodations will be considered as described above in paragraph D. 2. To the extent required by law, ECRA will maintain the confidentiality of the diagnosis and medical records of employees with serious diseases.

**F. Complaint Procedure, Investigation and Response.** The following procedure is applicable to any employee complaint of discrimination and/or harassment.

**1. Complaint.** Any person who sees or hears about conduct that may constitute harassment or discrimination under this policy should immediately contact the Principal. If the Principal is involved in the reported conduct, or for some reason the employee feels uncomfortable about making a report to the Principal, the employee should report directly to the President of the ECRA Governing Council. Complaints may initially be made verbally. However, ECRA requires that the “Harassment Complaint Form” be completed by complainant as a first step in the investigation process. (See Appendix A for a copy of this form).

**2. Investigation.** ECRA will investigate any report of harassment or discrimination. All employees have a duty to cooperate in ECRA’s investigation of alleged harassment or discrimination. Failure to cooperate or deliberately providing false information during an investigation will be grounds for disciplinary action, including termination. In conducting an investigation, ECRA will respect the privacy of all concerned, however, complete confidentiality may not always be possible because of the need to conduct an investigation and take the steps necessary to eliminate harassment.

**3. Response.** ECRA will take whatever corrective action deemed necessary. Disciplinary action, up to and including termination, may be taken. ECRA will discuss with the complainant the outcome of the investigation and where appropriate may ask for feedback regarding the complainant’s preferred resolution. ECRA will also discuss the outcome of the investigation and any disciplinary actions with the alleged offender. The date of the discussion shall constitute the “determination date.” Bad faith complaints will be grounds for disciplinary action, including termination. The Principal will notify the Governing Council of the outcome of the complaint and an official opinion as to whether there is sufficient evidence to support that there was a violation of ECRA policies. In cases involving allegations against the Principal, the President of the Governing Council will advise the Council of the outcome and an issue an official opinion.

**G. Retaliation.** Retaliation against any employee raising a complaint or providing information concerning an alleged violation of this policy is strictly prohibited.

Any employee who violates this policy by engaging in conduct defined throughout this policy that directly or indirectly causes intimidation, harassment or physical harm to another employee will be subject to disciplinary action.

**H. Appeal.** If the complainant or alleged offender is not satisfied with the outcome of a discrimination complaint, either employee may appeal that decision to the Governing Council. The employee appealing the Principal's decision must submit a written appeal to the Governing Council with copies to the other party and the Principal within ten (10) working days of the employee's notification of the Principal's determination. The non-appealing party and the Principal have the option of submitting written materials in support of their respective positions within five (5) working days from the date they receive the appealing parties' appeal.

**I. Final Decision.** The Governing Council will inform the complainant/respondent of the appeal decision in writing within twenty (20) working days from the date the appeal was submitted. After the Governing Council's review, the internal complaint process has concluded. The time lines set forth in this policy may be waived or extended by the Governing Council.

### **III. DRUG-FREE WORKPLACE.**

Employees who work while under the influence of alcohol or drugs present a safety hazard to themselves, their co-workers and students. In addition, employees who work under the influence of alcohol or drugs threaten ECRA's reputation and integrity. ECRA policy is to create a drug-free workplace in accordance with the Drug Free Workplace Act of 1988. The unlawful manufacture, distribution, dispensation, possession, sale or use of a controlled substance in the workplace or while engaged in business off premises, such as at a parent's home, are strictly prohibited.

#### **A. Prohibition and Standards.**

**1. General Prohibition.** No employee or student will unlawfully possess, use, distribute, dispense, manufacture or be under the influence of alcohol or drugs while on ECRA school grounds; at ECRA sponsored or supervised activities (e.g., field trips); in any ECRA owned, leased or used vehicle; while engaged in or going to or from ECRA activities; or, while attending a school-related activity (e.g., workshop).

**2. Definition of Drug.** For purposes of this policy, the term "drug" will include any "illicit drug," "controlled substance," "intoxicating substance," "inhalant," "counterfeit substance," "look-alike substance," "marihuana," "cannabis," "opiate," "hallucinogen," "narcotic," or other unlawful drug for purposes of federal or state law including, but not necessarily limited to the Drug-Free Workplace Act, the Drug-Free Schools and Communities Act Amendments, the U.S. Controlled Substances Act and the New Mexico Controlled Substances Act. NMSA 1978 §§30-31-1 et seq.

**3. Exceptions:** This policy is not intended to prevent possession of a controlled substance if it was obtained directly pursuant to a valid prescription or order, from a physician, dentist or other person duly licensed, registered, or otherwise permitted under federal and state law to distribute or dispense the substance in the course of professional practice. If an employee is taking prescribed or over-the-counter medication that may affect work performance, this information should be immediately reported to the direct supervisor.

**4. Conditions of employment.** As a condition of employment, each employee will abide by the terms of this drug-free workplace policy. Every employee is required to notify the Principal of any criminal drug conviction or plea of no contest for a violation occurring in the workplace no later than five (5) days after such conviction.

**5. Sanctions.** Where an employee violates the terms of this policy or is convicted of violating a criminal drug statute for an offense occurring in the workplace, the employee will be subject to sanctions, consistent with law and policy, which may include either appropriate personnel action against the employee, up to and including termination; or, a requirement that such employee satisfactorily participate in a drug-abuse assistance or rehabilitation program approved for such purpose by a federal, state or local health agency, law enforcement or another appropriate agency. The employee will be responsible for all uninsured costs associated with any such program.

#### **IV. CRIMINAL RECORDS/BACKGROUND CHECKS.**

### **G.06 – Background Checks and Employment History Policy and Procedure**

SECTION 1. PURPOSE: To comply with NMSA 1978, §22-10A-5 (2019), and §22-10A-5.2. These laws require Governing Bodies of public schools to adopt policies and procedures for obtaining and reviewing applicant employment histories, and background checks on applicants who have been offered employment, or who apply to be a volunteer, or who provide services to the School as a contractor or contractor's employee, who may have unsupervised contact with children or students on School premises or during School-sponsored events, including but not limited to online learning, and to address application, review, and reporting requirements.

SECTION 2. POLICY STATEMENT. The School is committed to ensuring that its academic and related programs are staffed with qualified employees, competent volunteers, and ethical contractors. It is committed to providing a safe and secure working and learning environment for employees, students, visitors, and others doing business with our School. Further, this policy is adopted to ensure protection of the School's property and other interests. To that end School Administration will obtain applicant Employment histories and complete a Background Check as set forth herein to safeguard our School community from individuals who have a history of ethical misconduct and/or criminal conduct of a nature that may present an unreasonable risk of harm to our School community.

SECTION 3. PERSONS AFFECTED. This policy applies to all applicants for employment, and all volunteers/contractors/contractors' employees/others who may have unsupervised contact with children or students while on School's premises or

during School sponsored events, including online learning. Failure or refusal to cooperate with the application requirements, and/or with Administration's completion of a Background Check, disqualifies the applicant from employment, volunteering at the School, or contracting with the School and/or the Governing Body. This policy does not apply to parents/guardians supervising only their own children during periods of online learning.

**SECTION 4. USE OF BACKGROUND CHECK INFORMATION; DISCRIMINATION SAFEGUARDS.** No applicant shall be required to disclose the applicant's criminal record prior to being offered a position contingent upon completion of a satisfactory Background Check. Subject to mandatory child abuse and ethical misconduct reporting requirements, information discovered through the School's Employment History/Background Check processes will be used solely for the purpose of evaluating an applicant's suitability for employment, volunteering or contracting, and will not be used to discriminate against a Finalist on the basis of race, color, religion/creed, sex/gender, age, sexual orientation, gender identity/expression, pregnancy, national origin, genetic information, marital/familial status, mental or physical disability, military, veteran status, or other protected status.

Convictions of felonies or misdemeanors contained in the FBI record shall be used in accordance with the New Mexico Criminal Offender Employment Act; provided that other information contained in the FBI record, if supported by independent evidence, may form the basis of employment decisions for just cause.

**SECTION 5. DISQUALIFYING ETHICAL MISCONDUCT/ CRIMINAL CONVICTIONS.** An applicant may be disqualified from employment/volunteering/contracting for ethical misconduct (defined below) or if convicted of a felony or misdemeanor involving moral turpitude and the criminal conviction directly relates to the position for which the individual will be employed, volunteering or contracting. The Governing Body finds that ethical misconduct (defined below), and criminal offenses listed herein, are so severe and directly relate to employment in any position at a public school that initial or continued employment, service as a volunteer, or contracting with individuals who have committed ethical misconduct or who have been convicted of such crimes, places the safety of students, employees and School visitors at an unreasonable risk. Ethical misconduct, and/or such crimes are, therefore, presumed to disqualify an individual from initial or current employment, volunteering or contracting with School. Such crimes include but are not limited to:

Criminal homicide, murder, capital murder, kidnapping, aggravated kidnapping, smuggling of persons, prostitution, false imprisonment, trafficking of persons, improper

relationship between educator/school employee and student, public lewdness involving a child or student, indecency with a child, injury to a child, child abuse or neglect, abandoning or endangering a child, sale or purchase of a child, child pornography, sexual solicitation of a child.

Before any offer of employment or opportunity to volunteer or contract is withdrawn by the Head Administrator, applicants will be provided the opportunity to respond to such information as set forth in Section 13(F), below.

SECTION 6. FELONY CONVICTION. A Finalist may be denied employment based on a conviction for a felony or misdemeanor involving moral turpitude that *does not* directly relate to the particular employment position, volunteer service or contract for service, but which is a crime listed in Section 5, if the conviction is less than seven (7) years old, and the Head Administrator determines after an investigation demonstrates that the person has not been sufficiently rehabilitated to warrant the public trust. Before any offer of employment or opportunity to volunteer or contract is withdrawn pursuant to this Section, the Finalist will be provided the opportunity to respond to such information as set forth in Section 13(F), below.

#### SECTION 7. CONFIDENTIALITY/MANDATORY REPORTING:

A. Confidentiality. Records and related information provided to School during the Background Check process including from the Finalist's FBI Record shall be deemed confidential and shall not be disclosed to any person who is not authorized to be involved in the decisions or to receive information concerning a Finalist, Volunteer or Contractor.

B. Protection. Information obtained by School through an FBI Report or information from a criminal history check, shall only be used in accordance with the Criminal Offender Employment Act, provided that other information contained in the FBI Record or other criminal report, if supported by independent evidence may form the basis for an employment decision, decision to enter a contract or to permit a volunteer to serve. Such information shall be maintained separately from personnel or other confidential files that are accessible only by authorized School employees.

C. Use of Information. Subject to mandatory child abuse and ethical misconduct reporting requirements, and to Subsections 7.D and E herein, information disclosed by a criminal Background Check shall only be used to make employment, volunteering or contract decisions.

D. The Head Administrator shall immediately report to the New Mexico Public Education Department any known convictions of a felony or misdemeanor involving moral turpitude of a licensed school employee, school contractor/contractor's employee, and/or school volunteer, as required by law.

E. The Head Administrator or designated representative shall investigate all allegations of ethical misconduct about any school personnel, employee, volunteer, contractor, or contractor's employee, who resigns, is discharged or terminated or otherwise leaves employment after an allegation has been made. If the investigation results in a finding of ethical misconduct by a licensed school employee, the Head Administrator or designated representative shall report the identity of the licensed school employee within 30 days following the separation from employment or immediately if the finding of ethical misconduct is sexual misconduct with an adult or child. The Head Administrator or designee shall also report allegations of sexual assault or sexual abuse involving any school personnel, employee, volunteer, contract or contractor's employee to the appropriate law enforcement agency. No agreement between a departing school employee and the School shall diminish or eliminate the responsibility of investigating and reporting the ethical misconduct to the NMPED or, if legally mandated, to law enforcement, and any such agreement to the contrary is void.

SECTION 8. EMPLOYEES – BACKGROUND CHECK RENEWALS. Employees must submit to a new background check after 5 consecutive years of employment. However, the School reserves the right to require any Employee to submit to additional criminal background checks at the School's expense at any time based on a reasonable suspicion that new information exists that would place students or other employees at an unreasonable risk of harm. The School shall pay for the renewal FBI Records check. An Employee's refusal to submit to a renewed background check will result in disciplinary consequences, up to including severance from employment. Information disclosed in a renewal background check may result in employment actions such as discharge or termination, mandatory reporting to the New Mexico Public Education Department's Licensing Bureau and/or the Public Education Department, or any other action deemed appropriate by the Head Administrator consistent with the Criminal Offender Employment Act, the Code of Ethical Responsibility of the Education Profession, School policies and procedures, or other applicable state or federal laws, rules or policies.

SECTION 9. VOLUNTEERS AND CONTRACTORS – BACKGROUND CHECK RENEWALS. New Background Checks for Volunteers must be completed after an interruption in service exceeding one (1) year. The School reserves the right to require a Volunteer, Contractor or a Contractor's employee(s) to submit to additional criminal

background checks at the School's expense at any time based on a reasonable suspicion that new information exists. The School shall pay for a new FBI Record for Volunteers who have previously served the School for at least one (1) year (12 months) in the past three (3) years (36 months). Contractors and Contractor's employees must obtain and pay for a new FBI Record check before commencing work pursuant to a third contract. An unsatisfactory Background Check conducted on Contractor's employees may be grounds to terminate the Contract. A Volunteer's or Contractor's (or Contractor's employees) refusal to submit to a renewed background check will result in ending a Volunteer's service at the School or may result in canceling a Contractor's contract.

SECTION 10. DESIGNATION OF AUTHORIZED EMPLOYEE TO RECEIVE CRIMINAL HISTORY INFORMATION. The school has applied for an ORI number and will sign a User Agreement with the New Mexico Department of Public Safety when the ORI number has been received. The Executive Director and the Business Manager shall be the authorized designee[s] for the School to request FBI Records for Finalists. The Executive Director shall notify the New Mexico Department of Public Safety (DPS) whenever there is a change in the School's authorized designee.

SECTION 11. FINGERPRINTS. All Finalists will be informed that his/her/their fingerprints will be used to perform an FBI records check for the purposes of determining suitability for employment, volunteering or contracting with the School.

SECTION 12. TRANSFER OF FBI RECORD. The School may not transfer, release to or otherwise convey information contained in the Finalist's FBI Record for any purpose other than for which it was obtained. Under no circumstances, may the School transfer the results of an FBI records check to a third party.

SECTION 13. DESTRUCTION OF FBI RECORD INFORMATION. When an Employee's, Volunteer's, or Contractor's FBI Record is no longer needed by the School, it shall be destroyed by burning, shredding or other method rendering the information unreadable.

SECTION 14. DPS AUDIT. FBI Records are obtained through the New Mexico Department of Public Safety. The DPS or other authorities (e.g. the FBI) may conduct security audits related to the information provided to the School. Records subject to audit include criminal history records, notifications to individuals, School policies and procedures related to security, confidentiality and records and information dissemination.

SECTION 15. PROCEDURES.

A. Application Employment History Requirements. As part of the application for employment/Volunteer service/Contractor approval, School shall require all Applicants to provide information relating to the applicant's work history, including:

a. a list of the applicant's current and former employers that were schools or that employed the applicant in a position involving unsupervised contact with children or students; the list shall include name/address/phone number/other relevant contact information for each of the applicant's listed employers;

b. a written statement describing whether the applicant:

i. has ever been under investigation for, or has been found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses provided in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;

ii. has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or

iii. has ever had a professional license or certificate denied, suspended, surrendered or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; and

c. a written authorization that authorizes disclosure of information requested in this subsection, and the release of related records by the applicant's previous employers, releasing the applicant's previous employers from any liability related to the disclosure or release of records.

B. Consent to Obtain FBI Record. Finalists, Volunteers and Contractors will be informed during the pre-employment, contracting or application for volunteer status, that employment, volunteering and contracting with the School is contingent upon completion of a Background Check with results acceptable to the Executive Director and consistent with this Policy. Said individual shall sign a consent form to complete a Background Check, including an agreement to submit to fingerprinting for purposes of the School obtaining an FBI Record. Employment or unsupervised access to students shall not begin until a satisfactory Background Check has been completed. The School shall pay for or reimburse Finalists and Volunteers for their initial Background Checks.



C. Employment History Review. The School shall conduct a review of an Applicant's employment history and contact the applicant's current and former employers listed in the application and shall request that the employer provide, within 30 days of receiving the request:

a. the applicant's dates of employment; and

b. a written statement describing whether the applicant:

i. has ever been under investigation for, or has found to have violated, any state or federal statute relating to child abuse or neglect, sexual misconduct or any sexual offense, including those offenses prohibited in Chapter 30, Article 3, 3A, 4, 6, 6A, 9, 37, 37A or 52 NMSA 1978, unless the allegations were false or unsubstantiated;

ii. has ever been under investigation for, or found to have violated, any ethical rule or policy approved by a former employer that previously employed the applicant, unless the allegations were false or unsubstantiated; or

iii. has ever had a professional license or certificate denied, suspended, surrendered, or revoked due to a finding of child abuse or ethical misconduct or while allegations of child abuse or ethical misconduct were pending or under investigation; and

iv. any other information the applicant's current or former employer deems pertinent and substantive to the applicant's suitability for employment that includes unsupervised contact with children or students.

c. The School shall make and document efforts to verify the Employment History information provided by applicants and employers, and to obtain from an applicant's current or former out-of-state employer(s) the information required above.

d. The School shall respond to requests for written information on current and former employees/contractors/volunteers from other employers, and shall provide the requested information as set forth herein, within 30 days of receipt of the request.

D. Other Background Checks for New Employment Positions, Volunteers, Contractors.

Applicants are subject to criminal background checks, licensure and/or certification (where applicable), and employment history checks as defined herein. Criteria requiring additional or different background checks by the School include but are not limited to:

1. Direct responsibility for the safety, supervision and/or security of students;
  2. Direct responsibility for handling or managing School funds; or
  3. Responsibility for operating School vehicles or machinery.
- E. Current Employees, Volunteers, Contractors Duty to Report.

As a condition of employment, continuation of volunteering and providing services pursuant to a School contract, all such persons are required to notify the Executive Director if they are charged, convicted, plead guilty to or otherwise found guilty of any misdemeanor or felony, regardless of the imposition of a sentence. This notification must be made as soon as possible, but no later than five (5) days after the event.

F. Submitting False Information/Willful Failure to Disclose.

If any person subject to this Policy provides knowingly false information or who willfully neglects to disclose information in response to questions about information gained through the Employment History and/or Background Check process, that person may be terminated from or denied employment, a volunteer may be prohibited from service, or a contract may be canceled. Any other material misrepresentation given during a Background Check or a renewal background check may result in revocation of any conditional offer of employment, opportunity to serve as a Volunteer, or to contract with the School, or separation from current employment, volunteer service, or a contract. Action may also be taken to deny, suspend, or revoke a license for providing false information or willful neglect to disclose information required by law.

G. Evaluation of Background Check Results. Once a Background Check is completed, the Executive Director will make the final hiring decision (or approve a volunteer for service/execute a Contractor's agreement to provide service) based on the information obtained. Any findings of concern will be reviewed only by the Executive Director or in consultation with the business manager or the school attorney. If negative information is obtained through the Background Check process, the Executive Director will determine whether the information is directly related to the position and whether offering employment, volunteer service or a contract would be consistent with Section 5,

above. When making this decision the Executive Director will consider, among all other relevant information, the following:

1. For criminal convictions, the nature and gravity of the offense(s), the number and type of each type of offense, length of time since the offense(s), and whether it is directly related to the position offered.
2. For all other negative information, the nature and gravity of the conduct of concern or data obtained, length of time since the conduct or data obtained, whether the information is reliable and directly related to the responsibilities of the position.

H. Adverse Action Contemplated Due to Background Check Results. If an adverse action is likely based in whole or in part on the results of a Background Check, the Finalist will receive written notice of the specific reasons for the contemplated action. The Finalist will be permitted to provide responsive information regarding the criminal history or other negative information, including but without limitation proof of: an incorrect criminal history; proof of a misidentification in a criminal history; an explanation of the facts and circumstances surrounding the conduct; the number of offenses for which the individual was convicted; the individual's age at the time of the offense(s) and the time that has elapsed; evidence of the same type of work without incident; the individual's employment history before and after the conduct; rehabilitation, training, education employment or character references; information regarding the individual's fitness for the position; whether the individual is bonded, licensed or certified under federal, state (any), or local law; extenuating circumstances including but not limited to disparate legal and enforcement practices; and other pertinent information. If the Finalist does not respond to an opportunity to explain negative information appearing in the Background Check process within five (5) business days, a decision will be made by the Executive Director based on the information obtained. Extensions may be provided to the Finalist in the Executive Director's sole discretion.

If adverse action is taken against the Finalist in whole or in part because of the results of the Background Check, the Finalist will receive a written statement from the Executive Director indicating the offer of employment, volunteer service or offer to contract with the School is rescinded.

I. Designation of Authorized Employee to Receive Criminal History Information. The school has applied for an ORI number and will sign a User Agreement with the New Mexico Department of Public Safety when the ORI number has been received. The Executive Director and the Business Manager shall be the authorized designee[s] for the School to request FBI Records for Finalists. The Executive Director shall notify the

New Mexico Department of Public Safety whenever there is a change in the School's authorized designee.

J. Fingerprints. All Finalists will be informed that his/her/their fingerprints will be used to perform an FBI records check for the purposes of determining suitability for employment, volunteering or contracting with the School.

K. Transfer of FBI Record. The School may not transfer, release to or otherwise convey information contained in the Finalist's FBI Record for any purpose other than for which it was obtained. Under no circumstances other than those required by law, may the School transfer the results of an FBI records check to a third party.

L. Destruction of FBI Record Information. When an Employee's, Volunteers, or Contractor's FBI Record is no longer needed by the School, it shall be destroyed by burning, shredding or other method rendering the information unreadable.

M. DPS Audit. FBI Records are obtained through the New Mexico Department of Public Safety. The DPS or other authorities (e.g. the FBI) may conduct security audits related to the information provided to the School. Records subject to audit include criminal history records, notifications to individuals, School policies and procedures related to security, confidentiality and records and information dissemination.

N. NMPED List of Persons Reported for Convictions involving Moral Turpitude. As part of the background check process, the Executive Director shall request the list updated monthly by the NMPED which names the persons who have been reported as having been convicted of a felony or misdemeanor involving moral turpitude who have been found to have committed ethical misconduct, pursuant to NMSA 1978 §22-10A-5(I), and shall check a Finalist against that list.

## SECTION 16. DEFINITIONS.

A. Adverse Action. Withdrawal of an employment offer, denial of an opportunity to serve as a volunteer, or refusal to contract or cancellation of a contract to do business with the School, or any other decision made relating to employment, volunteer or contract services that adversely affects any current employee, Finalist, Volunteer or Contractor.

B. Applicant. An applicant being considered for employment, or an individual being considered as a contractor/contractor's employee/school volunteer who may have unsupervised access to students.

C. Background Check. Checking or verifying any or all parts of the Finalist's licensure, employment, educational, criminal, sex and violent offender histories. The nature and scope of the Background Check will be determined by the School in accordance with applicable laws, and will be appropriate for the position, but shall in all instances include obtaining an employment and criminal history check, and a Federal Bureau of Investigation record ("FBI Record") for individuals who will have unsupervised contact with children/students.

D. Contractor. All persons who, pursuant to a contract for services with the School or Governing Body, may have unsupervised contact with a child or student(s) regardless of whether the scope of services provided under the contract contemplates direct services to students. Such individuals include any person named in the contract, any employee of the Contractor who will have responsibilities under the contract at School or School-sponsored events, or any subcontractors assigned by Contractor to fulfill any service contemplated under the contract that require unsupervised contact with children/students.

E. Conviction. The act or process of judicially finding someone guilty of a crime. A conviction includes a judgment that a person is guilty of a crime pursuant to a jury verdict or confession or plea of guilty. A conviction as defined herein shall be sufficient evidence that the conduct of which the person is accused occurred.

F. Criminal history check. A search for any felony or misdemeanor convictions through the National Sex Offender Public Website, New Mexico Department of Public Safety Sex Offender Registry, public state or federal court filings, FBI Records check or other reliable sources containing information about criminal convictions. Criminal convictions will not automatically exclude a Finalist from consideration for employment unless they are related to the position offered and the decision not to hire is consistent with business necessity.

G. Employee. Individual currently employed by the School whether licensed or unlicensed.

H. Employment history check. Verifying that the Finalist worked in the positions cited in the Finalist's application and/or resume, and verification/investigation of the information provided by the applicant in the application. Verification shall include the review set forth in Subsection 15.C, and may also include dates of employment, positions held, eligibility for re-hire, licensure, certificates or other credentials required for the position, prior to extending an offer of employment.

I. Ethical misconduct. Means the following behavior or conduct by school personnel, school employees, school volunteers, contractors or contractors' employees:

a. Discriminatory practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status or serious mental condition;

b. Sexual misconduct or any sexual offense prohibited by Chapter 30, Article 6A or 9 NMSA 1978 involving an adult or child, regardless of a child's enrollment status;

c. Fondling a child or student, including touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin or anus; or

d. Any other behavior, including licentious, enticing or solicitous behavior, that is reasonably apparent to result in inappropriate sexual contact with a child or student or to induce a child or student into engaging in illegal, immoral or other prohibited behavior.

J. FBI Report. Is a report obtained by the School's Administration about a Finalist from the Federal Bureau of Investigation that may include criminal convictions for felonies or misdemeanors.

K. Finalist. An individual who has been offered employment, volunteer opportunity, or contract, contingent upon completion of a satisfactory Background Check, including but not limited to, teachers, educational assistants, administrators and other staff members, Volunteers, and Contractors.

L. License history check. Independent verification that the Finalist has the license(s), endorsements, certifications or other credentials as claimed by the Finalist as required for the position.

M. Moral turpitude. Means an act or behavior that gravely violates the accepted standards of moral conduct, justice or honest and may include ethical misconduct.

N. Unsupervised access to or contact with children or students. Means access to or contact with, or the opportunity to have access to or contact with, a child or student for any length of time in the absence of:

a. a licensed staff person from the same school;

b. a school volunteer who has undergone a background check pursuant to NMSA 1978, §22-10A-5; or

c. any adult relative or guardian of the child or student.

O. Volunteer. A person, including a relative of a student, who commits to serve on a regular basis at a school or other educational entity without compensation.

## **V. IMMIGRATION INFORMATION.**

ECRA will not hire or continue to employ an individual who is not legally authorized to work in the United States. However, ECRA does not discriminate on the basis of citizenship status or national origin in recruiting, hiring, discharging or in any other employment action. New employees must complete the employee section of INS Form I-9. All offers of employment are conditional upon the receipt of satisfactory evidence of an applicant's authorization to work in the United States. This evidence of the right to work must be provided within three (3) days of the employee's hire date. Failure to provide the appropriate documentation will be grounds for termination. ECRA will keep a copy of the I-9 in a file separate from the personnel file.

## **VI. WORKERS' COMPENSATION.**

ECRA provides workers' compensation coverage to all employees.

**A. Eligibility.** All ECRA employees are eligible for the workers' compensation program if they comply with the reporting requirements as set forth in the school's insurance policy.

**B. Reporting On-the-Job Injuries.** Employees injured at work must complete a written report of the incident within twenty-four (24) hours from the time of the injury. All reports must be made to the Principal (or designee) who will have the appropriate forms for making necessary reports. If the injured employee has specific questions concerning workers' compensation benefits, the Principal (or designee) will provide this information.

## **VII. UNEMPLOYMENT COMPENSATION**

Employees of ECRA are entitled to unemployment benefits to the extent provided for by law.

## **VIII. SOCIAL SECURITY**

ECRA does not have a 218A agreement with the Social Security Administration. This means that if employees pay into the NM Educational Retirement Board plan, they may not contribute to Social Security. This does not affect contributions to Medicare. For employees who are not covered by the Retirement Plan, Social Security is a required deduction.

## **IX. CONFIDENTIALITY**

**A. Personal Information.** ECRA employees will not, in any way, release any information about ECRA, its activities, or the activities of personnel except or its students: (1) as normally required by their duties, (2) expressly permitted by the Principal, and (3) in conformity with the requirements of applicable freedom of

information laws, the Family Educational Records and Privacy Act, the Health Insurance Portability and Accountability Act, and any other applicable federal, state, or local law or regulation.

No employee will publish, disclose, use, or authorize anyone else to publish, disclose, use, or in any way cause to be published, disclosed, or used, any private or proprietary information. Proprietary information means any information that the employee has, in any way, acquired, learned, developed, or created by reason of employment with ECRA. Only the Principal may authorize disclosures. Such authorization will be explicit and documented.

This policy reiterates the need for confidentiality in all aspects of employment at ECRA. During employment at ECRA, employees may learn or work with and be entrusted with confidential and/or privileged information about fellow employees, administrators, parents, students or applicants. All employees must exercise the highest degree of care not to disclose any such information, even inadvertently, to any unauthorized person in or outside of ECRA. Employees may not disclose any confidential or privileged information except to persons specifically designated in advance and in writing by the Principal. Confidential information includes but is not limited to:

- Student records
- Financial information
- Personnel records
- Payroll records
- Computer programs, codes, processes and passwords
- Personnel information regarding school parents and students

Any employee who believes confidential information must be disclosed to a third party should consult with the Principal prior to the disclosure. **There is no excuse for the unauthorized disclosure of confidential information. Failure to follow this policy will result in disciplinary action. Your obligations under this policy continue after your termination of employment.**

**B. Employee References.** All written or telephone requests for business references, whether addressed to an individual or ECRA, will be referred to the Principal (or designee) for reply. All information released on employees must be in writing, with a copy retained in the employee's personnel record. Without an employee's prior written authorization or release, the Principal (or designee) will only confirm that the employee works or has worked at ECRA.

**C. Employee Requested Credit Checks.** All requests for business credit checks (salary confirmation) will be referred to the Principal (or designee) for reply when written authorization from the employee has been obtained. Replies to telephone requests for salary confirmation will be limited to confirming title, salary, dates of employment and employment status.

**D. Government Inquiries.** ECRA will respond to all requests for information ordered by a court or administrative agency including information sought by subpoena.

## **X. COMPLIANCE WITH LAWS AFFECTING CHILD WELFARE**

Any employee, volunteer, or contractor who knows or has a "reasonable



suspicion” that a child has been the victim of child abuse is required by law to report the instance immediately to one of the following child protective agencies: local law enforcement; the New Mexico Department of Children, Youth and Families, or a tribal law enforcement or social services agency for any Indian child residing in Indian country. NMSA 1978 §32A-4-3. Persons who violate reporting requirements are guilty of a misdemeanor. “Reasonable suspicion” arises when the facts surrounding the incident or situation could cause another person in the same situation to suspect child abuse.

**A. Reporting responsibility.** As noted, child abuse should be reported immediately by telephone to a child protective agency. The telephone call is to be followed by a written report within thirty-six (36) hours. There is no duty for the reporter to contact the child’s parents. In fact, if a child is released to a peace officer or a child protective agency agent, the reporter will not notify the parent as required in other instances of removal. Child protective agencies responding to incident reports are prohibited from disclosing a reporter’s identity to a reporter’s employer.

**B. “Abuse” defined.** Child abuse is broadly defined as “a physical injury which is inflicted by other than accidental means on a child by another person.” Child abuse can take the following forms:

- **Sexual abuse:** Sexual abuse means, in general, sexual assault or sexual exploitation. Sexual abuse does not include children who voluntarily engage in sexual activity with children of a similar age. However, such situations raise the issue of possible neglectful adult supervision. Pregnancy of a minor does not, in and of itself, constitute suspicion of child abuse;
- **Neglect:** Neglect occurs when a child’s custodian has failed to provide adequate “food, clothing, shelter, medical care, or supervision” that may or may not have resulted in any physical injury;
- **Unlawful corporal punishment:** Unlawful corporal punishment occurs when any person willfully harms or injures a child to such a degree that a traumatic condition results; and
- **Willful cruelty or unjustifiable punishment:** Child abuse also includes the situation where any “person willfully causes or permits any child to suffer... unjustifiable pain or mental suffering,” or when any person endangers a child’s health.

## **G.17 POLICY re: REQUIRED TRAINING IN DETECTION/REPORTING OF CHILD ABUSE/NEGLECT, ETHICAL MISCONDUCT, PROFESSIONAL RESPONSIBILITIES, SEXUAL ABUSE, AND ASSAULT/SUBSTANCE ABUSE**

All SCHOOL employees, school volunteers, school contractors and contractors’ employees shall be required to complete training developed or adopted by the NMPED in the detection and reporting of child abuse and neglect, ethical misconduct, professional responsibilities, sexual abuse and assault and substance abuse, within the school employee's, school volunteer's, contractor's or contractor's employee's first year

of employment at SCHOOL. Employees, volunteers, contractors and their employees of the SCHOOL during the first fiscal year following adoption of this policy shall complete this training during the first fiscal year following adoption of this policy.

## **A. 08 Ethical Misconduct Investigation and Reporting Policy**

School employees, School volunteers and School contractors/contractor's employees who know or who have a reasonable suspicion that a child or student has been subject to ethical misconduct by a School employee, a School volunteer, a School contractor or a contractor's employee, shall report the matter immediately to:

- (1) the Executive Director; or
- (2) the NMPED.

If the Executive Director receives a report of known/suspected ethical misconduct against a child/student, the Executive Director shall immediately transmit to the NMPED by telephone the facts of the report and the name, address and telephone number of the reporter. The Executive Director shall transmit the same information to NMPED in writing within forty-eight hours. A written report to NMPED shall contain the name, address and age of the child or student; the child's or student's parents, guardians or custodians; the school personnel, school employee, school volunteer, contractor or contractor's employee who is alleged to have committed ethical misconduct; and any evidence of ethical misconduct, including the nature and extent of any injuries and other information that the maker of the report believes might be helpful to investigate a report of ethical misconduct. The written report shall be submitted upon a standardized form developed by NMPED.

The Executive Director receiving the initial report of ethical misconduct against a child or student shall take immediate steps to ensure prompt investigation of the report. The investigation shall ensure that immediate steps are taken to protect the health or welfare of a student or child who is the subject of the report. The School shall take immediate steps to ensure the safety of enrolled students. After a report of suspected ethical misconduct against a student or child is made to the Executive Director, the Executive Director shall notify the person making the report within five days after the report was made that the Executive Director is investigating the matter.

A law enforcement agency, the NMPED and/or the Executive Director shall have access to any records and documents pertaining to an ethical misconduct case maintained by the School, School employees, School volunteers, and/or School contractors/contractor's employees. All investigations shall be kept confidential insofar as possible in compliance with applicable laws. The identity of any alleged victim(s) shall be kept confidential in accordance with applicable laws.

For purposes of this Policy, "ethical misconduct" means the following behavior or conduct by school personnel, school employees, school volunteers, school contractors or contractors' employees:

- (1) discriminatory practice based on race, age, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity, mental or physical disability, marital status, religion, citizenship, domestic abuse reporting status or serious medical condition;
- (2) sexual misconduct or any sexual offense prohibited by Chapter 30, Article 6A or 9 NMSA 1978 involving an adult or child, regardless of a child's enrollment status;
- (3) fondling a child or student, including touching private body parts, such as breasts, buttocks, genitals, inner thighs, groin or anus; or
- (4) any other behavior, including licentious, enticing or solicitous behavior, that is reasonably apparent to result in inappropriate sexual contact with a child or student or to induce a child or student into engaging in illegal, immoral or other prohibited behavior.

## **XI. PROPERTY PRIVACY POLICY.**

All ECRA employees should consider that business property; i.e., ECRA equipment, desks, computers, computer software, e-mail, voicemail and other property and electric items are for business use only. Employees may, however, receive necessary and appropriate personal messages by computer e-mail or office voice mail. ECRA reserves the right to inspect all property such as listed here for reasons it deems sufficient to protect the interest of ECRA employees and students. Inspections may be without notice. Consequently, employees should not store or keep any property at ECRA that they consider private or of a personal nature.

## **XII. E-MAIL AND COMPUTER USAGE.**

**A. General Policy.** The use of school technology resources shall be considered a privilege granted to employees for the enhancement of job-related functions. Employees may have limited access to these resources for personal use. Any personal use shall comply with the professional standards and administrative procedural directives outlining acceptable use of technology resources. All employees have the responsibility to educate, supervise and monitor appropriate usage and conduct of students when on the internet. Violations of this policy may result in the revocation of this privilege. Employees may face disciplinary action up to and including termination, civil litigation, and/or criminal prosecution for misuse of these resources. **Staff passwords must not be shared with students**

**B. Prohibited Uses.** ECRA does not attempt to articulate all possible violations of this policy. In general, employees are expected to use ECRA computers and computer networks in a responsible, polite and professional manner. Users are not allowed to:

1. Knowingly send, receive, or display sexually oriented images, messages, or cartoons.
2. Knowingly send, receive, or display communications that ridicule, disparage, or criticize a person, a group of people, or an organization based upon race, national origin, sex, sexual orientation, age, disability, religion, or political beliefs.
3. Knowingly send, receive, or display communications that demean, threaten, insult, harass or defame others.
4. Knowingly send, receive or display communications that (a) disparage or berate Governing Council members or employees, (b) diminish employee productivity and/or professionalism.
5. Violate any local, State, or Federal statute or regulation including, but not limited to copyright laws.
6. Solicit, endorse, or proselytize others for commercial ventures, outside organizations, or religious, social, or political causes.
7. Disrupt, disable, damage, or interfere with services, equipment, or other users.
8. Access, assist, or allow others to access equipment, files, passwords, user codes, or information without authorization.
9. Make changes to computer configurations without permission from the Technology office. Such changes are strictly prohibited violations of ECRA policy. Prohibited changes to computer configurations include, but are not limited to, installing software, modifying the operating system or installed applications, adding additional hardware or moving computer systems from their assigned locations.

**C. Supervision of Computer Use.** ECRA reserves the right to review, audit, intercept, access, and disclose all matters on ECRA computers, including information accessed via Internet and e-mail systems, as business conditions and/or security considerations warrant, with or without employee notice, during or after employee working hours. The use of an ECRA-provided password by an employee does not restrict ECRA's right to access electronic communications. While ECRA may or may not regularly monitor electronic communications, employees using this resource should have no expectation of privacy in their e-mail or Internet use. Accordingly, employees must ensure at all times that their electronic communications are appropriate, lawful, and in compliance with the provisions of this Policy. As a condition of use of these resources, employees agree to ECRA review and disclosure of e-mail and Internet records.

**D. Consent to Terms of Use.** By using ECRA computers and other technology-related resources, employees acknowledge and accept the rules and conditions for e-mail, Internet and computer usage set forth above and any other policy or directive as given by the Principal or Governing Council.

### **XIII. CONTRACTS.**

All licensed and certified employees will be employed pursuant to written contracts signed by the Principal prior to the first day of employment.

**A. Form.** All contracts will be in writing and will contain and specify the length of service, the salary to be paid, the method of payment, the general causes for

termination of the contract and other provisions that are required by state law. The contract will be in a form substantially similar to a form approved by the New Mexico Public Education Department.

**B. Length.** All employment contracts between ECRA and certified/licensed school personnel will not be for a period of greater than one (1) year except:

1. Contracts for less than one (1) school year permitted to fill personnel vacancies occurring during the school year;

2. Contracts for the remainder of a school year permitted to staff program(s) when the availability of funds for the program(s) is not known until after the beginning of the school year;

3. Contracts for less than one (1) school year permitted to staff summer school programs and federally funded programs in which the federally approved programs are specified to be conducted for less than one (1) year;

4. Contracts not to exceed three (3) years permitted for certified school administrators in public schools who are engaged in administrative functions for more than one-half of their employment time; and,

5. Contracts not to exceed three (3) years permitted at the discretion of the Governing Council and at the recommendation of the Principal for certified school instructors in public schools who have completed at least three (3) full contract years at the charter school.

In sum, ECRA employees have no right to re-employment at the end of their contract terms and no contract entered into between an employee and ECRA will be construed as an implied promise of continued employment. NMSA 1978 §22-10A-21 (2003).

**C. Contract Renewal.** On or before the last day of the school year of the existing employment contract, the Principal will serve written notice of reemployment or termination on each licensed teacher or other certified employee.

1. Notice of reemployment will be an offer of employment for the next school year, conditioned on the available funding for the particular program.

2. Notice of termination will be notice of the Principal's intent not to reemploy the individual for the next school year.

3. Failure of the Principal to serve written notice will be construed to mean that a notice of reemployment has been served upon the person for the ensuing school year according to the terms of the existing employment contract, but subject to any additional compensation allowed other licensed or certified staff of like qualifications and experience employed by ECRA. However, in no event will the failure to provide written notice extend the period of the next contract to more than one (1) year.

**D. Service of Notice of Reemployment.** Notice of reemployment may be made by hand delivering a copy and obtaining a signed and dated receipt that such notice was provided; or, service may be accomplished by mailing a copy to the individual's last available address certified mail return receipt requested.

**E. Service of notice of termination.** Notice of termination will be served by hand delivering to the employee or mailing a copy to the individual's last provided address certified mail return receipt requested.

**F. Reemployment.** Each licensed staff member must provide a written acceptance or rejection of employment within fifteen (15) days of the date the written Notice of Reemployment is served. Failure to accept within the time provided will constitute a withdrawal of the original offer unless otherwise agreed to in writing by the parties.

**G. Binding Effect.** Delivery of the written acceptance will constitute a binding contract between the individual and ECRA. A written contract will be signed no later than ten (10) days before the beginning of the next school year.

#### **XIV. PAYROLL, BENEFITS AND LEAVE POLICIES.**

##### **A. Salary.**

1. **Licensed Employees.** ECRA licensed employees will be paid in accordance with New Mexico law as may be amended by the New Mexico Legislature from time to time. Nothing in this section will preclude the Governing Council from paying licensed employees a higher than minimum salary based on merit and/or experience.

2. **Other Employees.** ECRA employees will be paid in accordance with approved salary schedules or as otherwise determined by the Principal.

**B. Employment Classifications.** Your position at ECRA is classified as either regular full-time, regular part-time, substitute full-time or temporary. In addition, you are classified as either **non-exempt** or **exempt**. Certain policies and procedures outlined in the Employee Handbook may apply differently to you depending on how your job position is classified. If you have a question concerning applicability of any particular provision, contact the Principal or the Business Manager prior to signing the receipt for this Handbook.

1. **Non-Exempt and Exempt Employees.** At the time you are hired or you transfer to a new position, you will be classified as either "exempt" or "nonexempt." This is necessary because, by law, employees in certain types of jobs are entitled to overtime pay for hours worked in excess of forty (40) hours per workweek. These employees are referred to as "non-exempt" in this Employee Handbook. This means that they are not exempt from (and therefore should receive) overtime pay.

Exempt employees are Principals, business managers, teachers, counselors, social workers, and others whose duties and responsibilities allow them to be "exempt" from overtime pay provisions as provided by the Federal Fair Labor Standards Act (FLSA) and any applicable state laws.

2. **Full-Time Employees.** An employee who works 40 hours per week, is considered a full-time employee. You are eligible for all insurance benefits offered by New Mexico Public School Insurance Authority and First Financial.

3. **Part-Time Employees.** An employee who is regularly scheduled to work less than 40 hours per week is considered a part-time employee. If you are a part-time employee working less than 20 hours per week, you are not eligible for the employee benefits described in this Employee Handbook. Benefits will be prorated for employees working between 20 and 39 hours per week.

4. **Substitute Full-Time Employees.** A substitute is regularly scheduled to work 40 hours per week, but is not permanently assigned to a classroom. The first

thirty days of employment will be used to determine if you are eligible for medical benefits. If you work for thirty days at 7.5 hours per day you are eligible. This employee group is only eligible for Medical, Dental and Vision benefits through New Mexico Public School Insurance Authority. You are not eligible for supplemental benefits through First Financial.

**5. Temporary Employees.** An employee who works on an on-call basis. You are not eligible for the employee benefits described in this Employee Handbook

**6. Overtime Pay.** If you are a non-exempt employee you will be paid overtime in accordance with state and federal laws. Any overtime over 10 minutes must be approved in advance by the Principal; failure to obtain authorization prior to working overtime may result in disciplinary action. For purposes of determining overtime pay, ECRA's work week shall be from 12:00 a.m. Monday until 11:59 p.m. Sunday.

**C. Insurance Benefits.** ECRA offers benefits as described in the insurance benefits package offered through the New Mexico Public Insurance Authority. Employees should consult the documents relating to the benefits packages for information on premium payments, dependent coverage and other pertinent requirements of the plan provided by ECRA. Supplemental benefits are available through First Financial.

#### **D. Pay Periods And Pay Checks.**

**1. Pay Days.** Payroll checks are issued every other Thursday. There are 26 pay dates in most years. Pay periods are Monday through Sunday.

**2. Authorization of agent.** If an employee chooses to have another individual pick up his/her paycheck, that individual must have a signed note from the employee giving them authorization to receive the check.

**3. Error.** If an employee believes that his/her paycheck contains an error, the employee should notify Payroll on a staff concern form or an email. Any request for adjustment in pay will be made in writing and must be approved by the business manager before being processed by payroll. **Failure to notify payroll of an error in pay within ninety (90) days may constitute a waiver of any such discrepancy.**

**4. Direct Deposit.** Direct deposit is available to all employees. Written authorization for automatic deposit is required. If an employee leaves employment and does not return ECRA property, your direct deposit may be discontinued and live checks will be issued until all property is returned.

**5. Final paychecks.** Final paychecks will be distributed by Principal (or designee) in accordance with applicable state and federal laws.

#### **E. Deductions.**

**1. State/Federal Payroll deductions.** By law, ECRA will be required to deduct, where applicable, federal and state withholding taxes and court-ordered garnishments from an employee's pay. Public school employees are required to participate in the Educator Retirement systems and such deductions are made automatically from the employee's paycheck.

**2. Authorized employee deductions.** Any other deduction the employee desires to have made from his/her pay check must be requested in writing. The request must be submitted to the payroll office in sufficient time for processing.

From time to time adjustments to deductions may be needed to make sure an employee's deductions are correct.

**3. Court-ordered deductions.** The Principal (or designee) will give an employee written notification of a garnishment received by ECRA and will send a copy to payroll for implementation. Employees must obtain an appropriate court-order and present the same to the ECRA payroll office to avoid having court-ordered deductions made from their paychecks. Employees are responsible for all associated costs and fees.

**F. Personal/Sick Leave.** Full-time teaching staff will accrue one (1) day per month from August 1 through May 30, per contract year leave; i.e. a total of ten (10) days, which may be used for personal leave or sick leave. Year round employees, including administrators and office staff, will accrue one (1) day per month per annum for use as personal or sick leave; i.e., a total of twelve (12) days, which may be used for personal leave or sick leave. Personal/sick leave may be carried over from year to year up to a total of thirty (30) days. Part time employees (who work 20 hours or less), temporary employees do not accrue personal leave. Unused Personal/Sick leave balances will not be paid out when employees leave ECRA.

**G. Shared Leave Bank.** ECRA has established a shared leave bank to provide a safety net against salary interruption for employees who have an **extreme** condition causing them to be unable to perform their assigned job duties. Donations of sick leave hours by employees provide income to an affected employee who would otherwise be on unpaid leave. The purpose is not to provide unlimited sick leave for any medical reason. This policy applies to all full-time and half-time faculty and staff.

Employees may voluntarily donate accumulated sick leave hours to a shared leave bank for distribution to aid another employee who is unable to work due to personal illness or crisis. Donating employees donate sick leave at their individual pay rates and the recipient is credited with sick leave at his/her individual pay rate. Therefore, the leave recipient will be paid at his/her current pay rate, not at the pay rate of the person donating the leave time. Approval to receive donated leave time is dependent upon approval of the principal.

#### A. Eligibility to Receive Shared Leave

Faculty and staff may receive shared leave as follows:

1. An employee must have exhausted all of his or her own vacation and sick leave.
2. For each application, an employee must be unable to work a regular schedule for at least a continuous period of 5 calendar days.
3. An employee may apply for his/her own serious illness or injury, or for a certifiable illness or injury of immediate family, defined as:
  - 1) Illness of employee's spouse



- 2) Illness of employee's children
- 3) Illness of employee's parents
- 4) Illness of spouse's parents
- 4. An employee must have worked at ECRA continuously for one full academic year.
- 5. The maximum amount of shared leave bank benefits accessible to a recipient cannot exceed one month leave time.
- 6. If an employee returns to work prior to using all hours granted, the unused balance of hours granted returns to the shared leave bank.
- 7. If intermittent treatment is required, unused approved shared leave bank benefits will be provided on an as-needed basis until the employee (or family member) recovers from the serious illness or injury or the benefit ends, whichever is earlier.
- 8. The estate of a deceased employee is not entitled to payment for approved unused shared leave bank hours.
- 9. Shared leave bank hours may not be converted to cash.
- 10. Employees may not solicit or distribute lists inquiring for donations from the sick leave bank.
- 11. If the hours in the shared leave bank are not sufficient and a need arises, the Principal may send a communication to faculty and staff indicating such a need but may not under any circumstances coerce an employee(s) to contribute leave time.
- 12. A contributor does not have to first donate to the bank in order to receive donations from the bank.
- 13. Employees who use leave from the shared leave bank are not required to pay the bank back for leave used.
- 14. It is not possible to make back-payments to a shared leave bank recipient who may have already taken some leave without pay. Donated time will be available for use by the recipient in accordance with regular payroll procedures and deadlines.
- 15. Employees who are off work due to an on-the-job injury or illness are not eligible to use the shared leave donation bank.
- 16. An intent to return to work is not required in order to be eligible for the shared leave donation bank; however, employees who utilize the full amount of approved bank benefits must return to work for six continuous months following their last day of use of the donated time before they are eligible to apply for additional benefits from the bank.
- 17. Employees receiving a medical release for return to work on a part-time basis (i.e., fewer hours per day per week than the regular work schedule), may continue to use donated leave for the balance of the regular work schedule until medically released for full duty, or up to the equivalent of the maximum of 30 calendar days, whichever comes first

#### B. Eligibility to Donate Shared Leave

Faculty and staff may donate sick leave as follows:

1. The donation of leave is strictly voluntary. No employee shall be coerced or financially induced into donating leave time.
2. A contributor may not designate a particular employee to receive the donation.
3. Time must be donated in whole hours.
4. An initial donation requires a minimum of eight hours.
5. The maximum number of hours that may be donated during any 12-month period is 40.
6. Sick leave which has been contributed to the shared leave bank cannot be restored to the contributor.
7. The contributor's identity will remain confidential, unless he/she chooses to self-identify.
8. A contributor does not have to first donate to the bank in order to receive donations from the bank.
9. The contributor does not receive any type of tax deduction for the donated leave time.

C: To request leave

- A. An employee requesting leave from the shared leave donation bank will complete and print an application form available on the allshare drive under forms, and submit to the Principal.
- B. The application must be accompanied by a physician's statement indicating beginning date of health condition and anticipated date employee will be able to return to work. If the request is for time off to provide care to a qualified family member, the employee will provide a written statement indicating the relationship, where the family member resides, and the extent to which the family member is dependent on the employee for the recuperative care.
- C. After receiving an application, the Principal and the Payroll office will verify the employee's eligibility and status, including current accumulated vacation and sick leave balances.
- D. The Principal will notify the employee of the decision within five (5) business days of receipt of application.
- E. If the application is approved, the Payroll office will make the transfer of hours from the school's shared leave bank to the employee's sick leave bank. Neither the donating employee nor the employee receiving time needs to reflect any transfer of hours on his/her time sheet; the hours will be reflected on the applicable employee's paystub leave balance.

D: To donate leave:

- A. An employee wishing to donate sick leave to the shared leave donation bank will complete and print an application form available on the allshare drive under forms, and submit to the Principal.
- B. After receiving an application, the Principal and Payroll office will verify the employee's eligibility and status, including current accumulated sick leave balances.
- C. The Principal will notify the employee of the decision within five (5) business days of receipt of application.
- D. If the application is approved, the Payroll office will make the transfer of hours from the employee's sick leave bank to the school's shared leave bank. The donating employee does not need to reflect any transfer of hours on his/her time sheet; the reduction of hours will be reflected on the applicable employee's paystub balance.

**H. Bereavement (Funeral) Leave.** ECRA employees are permitted two (2) days of paid leave due to a death in the employee's immediate family. Immediate family is defined as a spouse, child (step child), mother, father, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, step-parent, grandchild, grandparent, other relatives who live in the employee's home. Additional leave for bereavement may be granted at the discretion of the Principal. Bereavement leave does not accrue. Verification of death may be required as well as information concerning the employee's relationship to the deceased. The request form should then be given to the Principal (or designee).

**I. Holidays.** ECRA holidays will be determined pursuant to the approved school calendar submitted to APS and the NMPED annually. All employees will be allowed holidays as scheduled by the calendar. Year round staff will be paid for 9 specific days to be approved by the Governing Council in July of every year. ECRA recognizes that some employees may wish to observe certain days that are not included in ECRA's school calendar as periods of worship or commemoration. Employees who would like to take a day off for such reasons may be permitted to do so if the employee's absence will not disrupt the school's orderly operations and if the employee's supervisor approves the request for leave in advance. Employees will use a personal leave day for such an absence.

**J. Snow Days for year round employees.** ECRA snow days will be determined based on Albuquerque Public Schools notifications. ECRA allows 16 hours of annual snow-related paid leave. The Principal will determine how much each day will be applied to the 16 hours, for example if a two hour delay is called the Principal will allocate 2 hours of the annual 16 hours for that day. This will apply to all full time year round employees. For those employees who work afternoon shifts, they will be allowed to leave two hours early so that they will not have to drive in night time conditions.

If a year in which the 16 hours is not adequate, the Principal will allow employees to work flextime within the next two weeks to make up the hours that would otherwise be charged to personal leave.

If an employee chooses to not work on a day that the school is open, they will use a personal leave day for such an absence.

**K. Jury Duty.** Full-time and part-time employees will receive their normal pay, less all amounts paid by the courts, for days or partial days for which an employee is

required to report to jury duty. The employee must disclose to ECRA's payroll department all amounts paid so that an appropriate offset from their regular pay can be made. Failure to timely provide this information may result in a delay in payment. Employees must provide a copy of the court order for jury duty to the Principal (or designee) as soon as made aware of the order. If an employee is excused from jury duty or the subpoena assignment for any full day, they must report to work on that day. In order to receive compensation for jury duty leave, the employee must provide documentation from the respective court as to the amounts paid for jury service.

**L. Leave Without Pay.** Employees may be granted leave without pay under extenuating circumstances that must be approved in advance by the Principal (or designee).

**M. Military Leave.** Military leave will be granted for Active Military Service and Reserve or National Guard Service as required by law. An employee requesting military leave must present appropriate orders. An employee on military leave will receive no pay. An employee on a military leave of absence may keep the group benefit program for six (6) months of leave, provided the employee pays the full amount of the premium(s) during this period. Payment for all premiums will be made prior to the beginning of the month for which coverage is being provided. Payment is to be made within thirty (30) days of the due date or coverage will be cancelled. Upon reinstatement to employment, benefits prior to leave will be reinstated. An employee on a military leave of absence may elect benefits under the COBRA regulations if the leave of absence extends beyond six (6) months.

Upon return from military leave, an employee will be reinstated to the employee's former position or a similar position at ECRA with no loss in benefit status provided the employee:

1. Applies for reinstatement within ninety (90) days of release from service or training, or from hospitalization following discharge but continuing for no longer than one (1) year;
2. Provides a certificate of satisfactory release from military service that is "honorable", "general", or "under honorable conditions;"
3. Remains qualified to perform the essential job functions of the former position.

**N. Leave Use.** Employees shall initiate a request for leave through the Principal at least two (2) weeks in advance of planned leave. Leave for certified staff may not include days before or after a Holiday and may not exceed 3 consecutive school days. **If the employee does not return to work after leave that includes school holiday, the employee must use (approved) personal leave or leave without pay.** A Leave of Absence Request form should be completed by the employee and submitted to the Principal (or designee) for approval. If the request is denied and the employee takes the time off regardless, the time off will be leave without pay and the employee may be subject to disciplinary action. The Principal's use of personal/sick leave shall be approved by the President of the Governing Council. All employees are required to notify the Principal (or designee) by telephone no later than two (2) hours prior to the beginning of the work day if they are sick or in cases of emergency. Employees, or their representative, must confirm that the Principal (or designee) has received the message

of the employee's absence. Consequently, sending last minute e-mails will not constitute sufficient notice of an employee's absence and may be grounds for disciplinary action. Employees who are absent due to illness for more than three (3) consecutive days will be required to provide a doctor's return to work certificate.

Administrators should try to schedule their non-contract days-off during times that school is not in session or ECRA is closed. The Principal and the senior vice-administrator should not take leave at the same time, unless it is during the time ECRA is closed. The Principal's extended leave should be approved by the Governing Council.

**Teachers must have contingent lesson plans prepared in case of unexpected absences.**

**O. Family Medical Leave.** The Family and Medical Leave Act of 1993 (FMLA) provides that a qualifying employer provide eligible employees up to twelve (12) weeks of job-protected and benefits-protected unpaid leave within a twelve (12) month period. It is the policy of ECRA to encourage employees to balance their work and family life by taking reasonable unpaid leave for certain circumstances that affect the family. These matters are covered by regulations issued by the United States Department of Labor regarding the Family Medical Leave Act (FMLA) of 1993. The regulations are complex. All employees should review this section carefully.

1. Employee Eligibility. Employees who have worked at ECRA a total of at least twelve (12) months (including teaching staff paid on twelve (12)-month contracts) and have also worked at least one thousand two hundred and fifty (1250) hours over the immediately-preceding twelve (12) months, may be eligible for FMLA leave. ECRA will grant an eligible employee up to a total of twelve (12) workweeks of leave during any twelve (12)-month period (measured backward from the date an FMLA leave begins) for one or more qualifying reasons. Eligible employees who meet FMLA notice and certification requirements (and who have not exhausted their FMLA leave entitlement for the year) have qualified reasons to take FMLA for:

- inability to work because of a serious health condition;
- care of an immediate family member (spouse, parent, son or daughter) with a serious health condition;
- and/or care of a child born to or placed with the employee during the past year.

2. Eligibility Definitions.

(a) "Serious health condition," in general, means an illness, injury, impairment, or physical or medical condition that involves inpatient care or continuing treatment by a health care provider. ECRA will require an employee to supply a health care provider's certification that the employee or family member has a serious health condition as defined by the law. For more detailed definition of "serious health conditions" that qualify, please contact the Human Resource Administrator.

(b) "Spouse" means a husband or wife as defined or recognized under New Mexico law for purposes of marriage.

(c) "Parent" means a biological parent or an individual who stood *in loco parentis* to the employee (not an in-law).

(d) “Son” or “daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age eighteen (18), or who is age eighteen (18) or older and “incapable of self-care because of a mental or physical disability.

(e) “Health care provider” includes clinical social workers and any other practitioner considered by the Principal to be capable of determining the existence of a serious health condition.

3. Accumulated Leave Applied/Leave without pay. ECRA will require, where applicable, that accrued paid leave be applied towards the FMLA twelve (12)-week limit. Paid leave includes personal and sick leave and Workers’ Compensation leave. Any paid leave used for an FMLA qualifying reason will be charged against an employee’s entitlement to FMLA leave. This includes leave for disability or worker’s compensation injury/illness, provided that the leave is for an FMLA qualifying purpose. The substitution of paid leave for unpaid leave will not extend the twelve (12)-workweek leave period provided by the FMLA. To the extent that an employee does not have available paid leave, the FMLA leave will be unpaid.

4. Limitations on the Leave Period. Leave to care for a newborn or newly placed child must conclude within twelve (12) months after the birth or placement. Spouses employed by the same employer may be limited to a combined total of twelve (12) workweeks of family leave for the following reasons: birth and care of a child; care of a newly placed child; and, care for an employee’s parent who has a serious health condition.

5. Intermittent or Reduced Schedule FMLA Leave. Employees may take FMLA leave on an intermittent or reduced schedule basis for an employee’s serious health condition or to care for an immediate family member with a serious health condition. Subject to ECRA’s approval, and at its sole discretion, an employee may take intermittent or reduced schedule FMLA leave to care for a newborn or newly placed child. Employees who need intermittent or reduced work schedule leave for foreseeable medical treatment must work with ECRA to schedule the leave to avoid undue disruption of the operations of ECRA. Any such arrangements will be subject to the approval of the employee’s health care provider.

6. Benefits Continuation While On FMLA Leave. An employee’s current group insurance plan benefits will continue during the FMLA leave on the same basis as if the employee had been continuously employed during that time. In addition, the employee will continue to make their usual employee contribution, if any, to the cost of those benefits. To the extent that the FMLA leave is paid, a portion of health insurance premiums, if any, will be deducted from the employee’s salary. While on unpaid FMLA leave, if an employee falls more than thirty (30) days in arrears for required employee contributions (i.e. those contributions which would otherwise be deducted from pay), if any, coverage will be canceled retroactive to the beginning of the month in which the delinquency occurred. ECRA will give notice prior to discontinuation of health insurance coverage. Employees will not accrue personal or sick leave during FMLA leave, however, FMLA leave will not be considered an interruption in service to ECRA. Whether your FMLA is counted toward years in service for purposes of New Mexico Educators Retirement will be governed by the Educator Retirement Board rules.

7. Requests for FMLA Leave. To request FMLA leave, employees must complete the Employer's Request for Leave form and submit it to the Human Resources Administrator. When leave is foreseeable for childbirth, placement of a child or planned medical treatment for an employee's own or a family member's serious health condition, the employee must give ECRA at least thirty (30) days advance notice. If it is not practical to give thirty (30) days advance notice, the employee should give notice as soon as practical (i.e., the minimum notice is usually within one (1) or two (2) business days of learning of the need for the leave). Requests for FMLA leave should include specific requests to take the leave intermittently or on a reduced leave schedule basis. ECRA will make a timely response to all FMLA leave requests by providing official notice on the U.S. Department of Labor "Employer Response to Employee Request for Family or Medical Leave" form. See Appendix B.

8. Required Documentation. Employees will be required to submit medical certification (Paragraph 10 below) from a health care provider to support a request for FMLA leave for their own or a family member's serious health condition. Medical certification forms are available from the Human Resources Administrator. In addition, when leave is taken to care for a family member, ECRA may require documentation or statement of family relationship (e.g., birth certificate or court document). All employees who take FMLA leave for a serious health condition will be required to provide a fitness for duty certification from the employee's health care provider before the employee will be permitted to return to work. During FMLA leave, ECRA may request that you provide recertification of a serious health condition at certain specified intervals. A failure to provide requested documentation of the reason for an absence from work may lead to termination of employment.

9. Designation of Leave as FMLA Leave. ECRA may designate leave taken as FMLA leave on a retroactive basis. However, once an employee has returned to work, ECRA will only retroactively designate the leave taken as FMLA leave if: (1) ECRA did not learn the employee was absent for an FMLA qualified reason until the return, and (a) ECRA promptly (within two (2) days) designated the leave as FMLA leave; or (b) Employee notifies ECRA within two (2) days of their return to work that the leave taken was FMLA leave; or, (2) ECRA could not confirm the leave qualified as FMLA before it was taken (e.g., missing medical certification) and had to issue preliminary designation that the leave was FMLA pending confirmation with appropriate documentation (if the leave's FMLA status cannot be confirmed, the preliminary designation will be withdrawn and the leave will not qualify as FMLA leave).

10. Medical Certification. ECRA requires that leave for a serious health condition of employee or employee's immediate family member be supported by a certification issued by a health care provider. ECRA will allow the employee fifteen (15) calendar days to obtain the medical certification. At its own expense, ECRA may require an employee to obtain a second medical certification from a health care provider of ECRA's choice. The second opinion will come from an independent provider, not a provider that ECRA regularly contracts with or uses. If the initial and second opinions differ, ECRA, again at its own expense, may require a third medical opinion. The health care provider for the third opinion must be selected with approval from both the employee and ECRA. The third opinion will be final and binding. See Appendix C for the

U.S. Department of Labor “Certification of Health Care Provider” form that ECRA will use to request medical certifications.

11. Notice of status. During FMLA leave, employees must provide ECRA with periodic (at least once per month) reports regarding their status and intent to return to work. If an employee’s anticipated return to work date changes and it becomes necessary to take more or less leave than originally anticipated, the employee must provide ECRA with written reasonable notice (i.e., within two (2) business days) of the changed circumstances and the new return to work date. If during a periodic check in, an employee equivocates about the intent to return to work, this will be considered notice that the employee has voluntarily resigned.

12. Return from FMLA Leave. Subject to limitations specified below, upon an employee’s return from FMLA leave, ECRA will reinstate the employee in the same position held before the leave or an equivalent position with equivalent pay, benefits and other employment terms. If an employee is not able to return to work at the end of the twelve (12) week period and ECRA agrees to extend leave without pay beyond the twelve (12) weeks, the employee’s FMLA status will have expired.

13. Limitations on Reinstatement. An employee is entitled to reinstatement following return from FMLA leave only if the employee would have continued to be employed had FMLA leave not been taken. Thus, the employee is not entitled to reinstatement if, because of a layoff, reduction in force or other reason, the employee would not be employed at the time job restoration is sought. ECRA may delay FMLA or deny reinstatement in certain cases where employees experiencing a serious health condition have failed to provide a required medical certificate or a certificate of fitness for duty to return to work.

14. Key Employees. ECRA reserves the right to deny reinstatement to salaried, eligible employees who are among the highest paid ten (10) percent of ECRA employees (“key employees”) if such denial is necessary to prevent substantial and grievous economic injury to ECRA operations.

15. Failure to Return to Work Following FMLA Leave. If an employee does not return to work following the conclusion of FMLA leave, the employee will be considered to have voluntarily resigned. ECRA may recover health insurance premiums that ECRA paid on the employee’s. However, ECRA may not recover its share of premiums paid on the employee’s if the employee failed to return to work because of their own or a family member’s serious health condition, or because of other circumstances beyond the employee’s control. In such cases, ECRA may require you to provide medical certification of the serious health condition.

16. Verification of leave. If the ECRA has reason to doubt an employee’s initial certification, ECRA may, with the employee’s permission, have a designated health care provider contact employee’s health care provider in an effort to clarify or authenticate the initial certification. ECRA may also require a second opinion (paid for by ECRA) by an independent ECRA-designated provider. If the initial and second certifications differ, ECRA may, at its expense, require you to obtain a third certification from a jointly selected health care provider. The third opinion is final and binding.

17. FMLA Information. ECRA employees may seek further information concerning his/her rights under FMLA by contacting the ECRA Human Resource



Administrator or the nearest office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor:

Albuquerque District Office Phone:  
US Dept. of Labor  
ESA Wage & Hour Division  
500 Fourth Street, Suite 403  
Albuquerque, NM 87102

1-866-4-USWAGE (1-866-487-9243)  
Patricia Davidson, District Director

**P. COBRA.** The Consolidated Omnibus Budget Reconciliation Act (COBRA) amended both the Internal Revenue Code and Employee Retirement Income Security Act (ERISA) to require that group medical insurance plans must provide continuation coverage at group rates to terminated employees, including in cases of: voluntary or involuntary termination other than for gross misconduct; and, reduction in the number of hours of employment. Spouses, dependent children and retirees may also receive COBRA coverage. Employees will receive additional COBRA information at termination from the New Mexico Public School Insurance Authority, if applicable.

#### **XV. OPERATIONAL POLICIES.**

**A. Attendance.** All employees are expected to report to work on time and be prepared to work as scheduled. Chronic or excessive absence and tardiness is disruptive to the school. For this reason, whether the absence is due to illness or other reasons, an employee is subject to discipline, up to and including discharge for excessive absences.

**B. Duty Day.** The normal work day will be eight (8) hours and includes a thirty (30) minute lunch break. Teaching staff are expected to be at school thirty (30) minutes before and after the school day.

**C. Abandonment.** An employee who fails to report to work without notice to the Principal or the employee's immediate supervisor for any period of time greater than one (3) regularly scheduled work day, will be deemed to have abandoned his/her position and to have voluntarily resigned. Reinstatement will be at the sole discretion of the Principal.

**D. Dress Code and Personal Appearance of Employees.** ECRA employees will serve as positive role models for students and set good examples of conduct, manners, dress and grooming. All personnel are expected to be neat, clean and appropriately dressed while representing ECRA. Professional personnel are expected to dress in a manner that projects a professional image for the employees and ECRA. Extremes in personal appearance or dress are not considered to be in good taste. In no case will the standard for employees be less than that prescribed for students as published in the ECRA Student Handbook. The Principal (or designee) is expected to counsel staff on appearance and conduct, if necessary. Failure to comply with the obligations set forth in this Section may result in disciplinary action.

**E. Conferences and Seminars.** ECRA will provide, within the parameters of the school's annual budget, either full or partial payment for approved professional development for instructional staff and non-licensed staff; e.g., business manager. Staff should make their requests in writing and each request will be considered on an

individual basis. Unless approved by the Principal (or designee), all expenses will be the responsibility of the requesting employee and are not subject to reimbursement.

**F. Tutoring or Advising for Pay.** Except for stipends for extra or co-curricular activities and adjunct faculty, ECRA employees are not permitted to receive pay for tutoring or advising any students assigned to them for classroom teaching or other ECRA functions.

**G. Solicitation.** In the interest of efficiency and security, ECRA's general policy is to restrict solicitations or distributions by employees to non-work areas during non-work time. Employees are prohibited from soliciting or distributing literature in work areas during work time. Solicitation or distribution of any kind by non employees is not permitted on ECRA premises at any time.

**H. Maintenance of Work Areas.** All work areas must be kept clean and orderly at all times. Because orderly equipment and classroom maintenance is necessary for implementing the ECRA curriculum, all staff, including teachers, are expected to keep their work areas clean and organized.

**I. Personnel Records.** ECRA strives to balance its need to obtain, use, and retain employment information with each individual's right to privacy. To this end, it attempts to restrict the personnel information maintained to that which is necessary for the conduct of its business or which is required by federal, state, or local law. The Principal (or designee) is responsible for overseeing the record keeping for all personnel information. Employees have a responsibility to ensure their personnel records are up to date and should notify the Principal (or designee) in writing of any changes in name; address; contact phone numbers; marital status (for benefits and tax withholding purposes only); number of dependents (for benefits and tax withholding purposes only); addresses and telephone numbers of dependents and spouse or former spouse (for insurance purposes only); beneficiary designations if applicable; and emergency contact information.

**1. Contents of File.** In addition, an employee's personnel file may contain the following information:

- a. Complete application for employment along with verification of qualifications for the position as outlined in job description;
- b. Professional license;
- c. Official transcript;
- d. Employee's contract;
- e. Signed Job description;
- f. Pre-employment references;
- g. Signed acknowledgment that the employee has received the Employee Policies Handbook, which includes separate acknowledgements that employee has received and understands policies on child abuse and neglect, confidentiality, equal employment opportunity; drug free workplace, conflicts of interest, employee complaints and problem solving, termination and discharge, employee discipline, email and computer usage, the employee code of conduct and confidentiality. (See Appendix D);
- h. Performance appraisals;

- i. Documented attendance at educational and training programs, including in-service courses and orientation;
- j. Any complaints, allegations, inquiries or findings of student abuse or neglect; warnings or disciplinary actions;
- k. Documentation of equipment issued to employee: keys, pagers, cell phones, etc.

**2. Separate File.** The following records will be maintained in a separate file, apart from the personnel file, for each employee:

- a. Employment medical records;
- b. Workers' compensation records;
- c. Health records;
- d. Drug testing records
- e. INS (Immigration and Naturalization) I-9 Form;

**3. Inspection of Personnel File.** Employees may inspect their own personnel records in the presence of the Principal (or designee). Such an inspection must be requested in writing to the Principal (or designee) and will be scheduled at a mutually convenient time. Employees who feel that any file material is incomplete, inaccurate, or irrelevant may submit a written request to the Principal (or designee) that documentation to correct such materials be added to personnel files. Only supervisors and others in management who have an employment related need-to-know about another employee may inspect the personnel files of a particular employee.

**J. Smoking, Tobacco, Non Tobacco Products.** ECRA complies with all applicable federal, state, and local laws and regulations regarding smoking, tobacco, and non-tobacco use in the work place in order to provide a work environment that promotes productivity and the well-being of its employees. Therefore, ECRA is a smoke free environment and smoking is prohibited within the campus boundaries.

**K. Use of School Property.** ECRA will maintain all forms to document an employee's use of school property away from school premises. School property will be returned upon demand, but in no event will this be later than the employee's last day of employment. Failure of an employee to return school property on demand may be turned over to the proper authority for investigation and appropriate action. Employees will be financially responsible for school property they have signed out, but have not returned to the school or that was damaged while in the employee's possession or control away from school premises. The school may discontinue payroll direct deposit privileges if ECRA property is not returned.

**L. OSHA/Safety and Security.** Consistent with federal OSHA requirements and to protect the well-being of employees, ECRA recognizes a need to limit the potential harmful effects of occupational exposure to blood and other potentially infectious bodily fluids where exposure to these materials (primarily hepatitis B and human immunodeficiency virus (HIV/AIDS)) could result in infection, illness or death of employees. The Health Safety policy covers all ECRA employees but particularly those who may reasonably anticipate coming into contact with these materials as a result of

their job duties. If your job duties may put you into this category, ECRA will provide you with appropriate information.

## **XVI. GENERAL JOB DESCRIPTIONS AND RESPONSIBILITIES.**

### **A. Principal.**

**1. In General.** The ECRA Principal will be hired and evaluated by the Governing Council and will report to the Governing Council on a regular basis concerning the operations of the school. The Principal will be responsible for the development of the learning environment at the school, accountability (fiscal and educational performance), oversight of school operations, and recommending personnel for hiring.

**2. Professional Development for the Principal.** All professional development completed by the Principal will reflect the mission, goals and objectives of ECRA. The Principal will have a professional development plan (PDP) that includes, but is not limited to, the following components:

- a. A development plan based on evaluations and his/her individual career goals;
- b. An allowance based on budget and grant receipts;
- c. A partnership between the Principal and an advisor and/or professional coach approved by the Governing Council;
- d. A time frame built into the schedule that allows for adequate staff collaboration;
- e. A full evaluation of how any professional development impacts school performance.

**3. Principal Evaluation Procedures.** The Council will semi-annually evaluate the Principal in compliance with New Mexico State Statutes, the State Board of Education's Educational Standards and any applicable grants, which require Principal evaluations. Based on a process and criteria that are mutually agreeable to the Council and the Principal, the Council will evaluate the Principal's effectiveness. The evaluation document and procedures to be used will be reviewed and approved annually by the Council and the Principal. The final annual evaluation will be completed and presented to the Principal by May 1<sup>st</sup>.

### **B. Licensed Personnel.**

**1. General.** All licensed personnel are hired by the Principal. Staff is expected to follow the directives of the Principal consistent with the ECRA charter and school policies and applicable Federal, State and local laws.

**2. Evaluation of Licensed Personnel.** The Principal (or allowed designee) will be responsible for evaluating licensed personnel in accordance with the New Mexico School Personnel Act and the NM PED requirements. The Principal may initiate a special evaluation if deemed appropriate to assess improvement or progress towards implementing the school's curriculum or classroom management skills. All licensed staff will be evaluated based on the "Competencies and Indicators for Licensed

Personnel” in compliance with NMSA §22-10A-19 (2003) and NMAC 6.69.4.1., and 6.62.4.1, et seq., or otherwise, as required by New Mexico law and the ECRA Charter.

**3. Professional Development Plan for Licensed Personnel.** All professional development completed by licensed personnel will reflect the mission, goals and objectives of ECRA. Licensed Personnel will devise a professional development plan that includes, but is not limited to, the following components:

- a. A development plan based on evaluations and his/her individual career goals;
- b. Achievement of required competencies;
- c. Continuous learning and growth in relation to the ECRA community and school program;
- d. Team work and collaboration with the administration and staff.

**Accomplishment of the goals in the professional development plan will be considered when completing the licensed professional’s evaluation.**

**4. Professional Development for the Staff.** All professional development courses completed by licensed personnel will reflect the mission, goals and objectives of ECRA.

**C. Ancillary and Support Staff.**

**1. General.** All Ancillary and Support Staff are hired by the Principal. Staff is expected to follow the directives of the Principal consistent with the ECRA charter and school policies and applicable Federal, State and local laws.

**2. Evaluation.** The Principal (or designee) will be responsible for evaluating the ancillary and support staff in accordance with the policies and procedures developed by the Principal and approved by the Governing Council. The Principal may initiate a special evaluation if deemed appropriate to assess improvement or progress towards implementing the school’s curriculum or skills.

**3. Professional Development for Ancillary and Support Staff.** All professional development courses completed by the ancillary and support personnel will reflect the mission, goals and objectives of ECRA.

**D. Conflicts of Interest.** Employees are prohibited from using confidential information acquired by virtue of their associations with ECRA for their individual or another’s private gain. Employees are prohibited from requesting or receiving and accepting a gift or loan for themselves or another that tends to influence them or appears to influence them in the discharge of their duties as employees. Business with suppliers to ECRA will not be influenced or appear to be influenced by an employee’s financial interest. Employees must not engage in activities which violate federal, state, or local laws or which, in any way, diminish the integrity, efficiency, or discipline of ECRA.

The New Mexico Public School Code provides:

“...a certified school instructor or a certified school administrator shall not, directly or indirectly, sell or be a party to any transaction to sell any instructional materials, furniture, equipment, insurance, school supplies or work under contract to the Department of Education, school district or public schools with which he/she is associated or employed. Nor shall any

such person receive any commission or profit from the sale or any transaction to sell..." (22-21-1.A NMSA 1978)

"...The provisions of this section shall not apply... in cases in which certified school instructors or certified school administrators contract to perform special services...during time periods wherein service is not required under a contract for instruction or administration." (This paragraph covers hiring athletic officials.) (NMSA 1978 §22-21-1.B)

**1. Spouses.** It will not be considered a violation of this section if the contract is truly with a spouse only, in the regular course of his/her business, and the employee has no personal interest, pecuniary or otherwise, in the contract.

**2. Resolving conflicts.** No "presumption of guilt" is created by the mere existence of a relationship with an outside firm or vendor. However, if an employee has any influence on transactions involving purchases, contracts, or supplies, it is imperative that the employee disclose that relationship to the Principal immediately so that safeguards can be established to protect all parties. An administrative measure for any ECRA employee who is found to be in a position of Conflict of Interest as defined above may include a transfer to a position so he/she cannot conduct business with the outside agency in question. Alternatively, the employee may be prohibited from exercising decision-making authority in the particular circumstance, or such other measure deemed appropriate by the Principal or the Governing Council.

**3. Investigation.** At the request of any staff member, the Principal may conduct an investigation and report the findings to the Governing Council. New hires will be notified of the policy prior to assuming job duties. If employees become aware of a conflict of interest subsequent to employment, they must notify the Principal.

**4. Misuse of Information.** No ECRA employee will for personal gain or for the gain of others use any information not available to the public that was obtained as a result of service to ECRA. No employee will personally exploit any business opportunity in which the employee knows or reasonably should know ECRA is or would be interested, unless ECRA first consents in writing. Also see Section VII regarding employee obligations to maintain confidentiality.

**5. Work With Professional Organizations and/or Associations.** An employee's work with or for an outside professional organization or association does not create a conflict of interest if such work:

- a. Is related to the legitimate professional interest and development of the employee;
- b. Does not interfere with the employee's regular duties;
- c. Does not use ECRA materials, facilities, or resources except as provided by ECRA;
- d. Does not compete with the work of ECRA and is not otherwise contrary to the best interests of ECRA; and,
- e. Does not violate federal, state or local law.

**E. Nepotism/Supervising Relatives.** Definitions:

**1. Definitions.**

a. **"Relative"** - is defined to include the spouse, child, grandchild, parent, sister, brother, aunt, uncle, niece, nephew, grandparent, son-in-law, daughter-in-law, sister-in-law, brother-in-law, mother-in-law, father-in-law, or a person *in loco parentis*.

b. **"Administrator" or "supervisor"** is defined to include all staff members who direct, supervise and/or evaluate the work of any subordinate employee.

**2. Prohibited employment relationship.** The relative of an ECRA administrator or supervisor may not be assigned to any position in which the administrator may be able to directly or indirectly supervise, evaluate, or control the work of the relative except with the specific written authorization from the Principal upon approval by the Governing Council.

**F. Staff Conduct with Students.** Staff members will maintain appropriate professional behavior while working with students and refrain from harassment, malicious or prejudicial treatment and abridgement of student rights. Failure to comply with the obligations specified in this section may result in disciplinary action.

**G. Staff Participation in Political Activities.** ECRA employees may hold public office regardless of the relationship between the public office and the interests of ECRA. ECRA seeks to assist employees/public officials in avoiding conflicts between the interests of the ECRA and the interests of the public official's constituents. An ECRA employee who serves as a public official, acting in his or her capacity as a public official, may speak, act, debate and vote according to their convictions without undue influence by the Governing Council or by the Principal. An ECRA employee who serves as a public official must take unpaid leave while performing official duties.

## **XVII. VIOLENCE IN THE WORKPLACE.**

ECRA is committed to preventing workplace violence. Given the increasing violence in society in general, ECRA has adopted the following guidelines to deal with intimidation, harassment, or other threats of (or actual) violence that may occur during business hours on its premises.

All employees, including supervisors and temporary employees, should be treated with courtesy and respect at all times. You are expected to refrain from fighting, rowdy behavior, or other conduct that may be dangerous to others. You may not bring firearms, weapons or other dangerous or hazardous devices or substances onto the ECRA premises.

ECRA will not tolerate conduct that threatens, intimidates, or coerces another employee, an ECRA student, visitor, guest, or candidate for employment. This prohibition includes all acts of harassment, including harassment that is based on an individual's gender, race, age, or any characteristic protected by federal, state, or local law. (See the No Tolerance Harassment Policy described in IIA).

Employees must immediately report violence or threats of violence, both direct and indirect, to a supervisor. If the supervisor is involved, employees make the report to the President of the Governing Council. This includes threats by employees, students, or visitors. Reports should be as specific and detailed as possible.

ECRA will promptly and thoroughly investigate all reports of violence or threats of violence as well as reports of suspicious individuals or activities. The identity of the

individual making a report will be protected as much as is practical. In order to maintain workplace safety and the integrity of the investigation, ECRA may suspend employees with or without pay, pending investigation.

Anyone determined to be responsible for acts or threats of violence or other conduct in violation of these guidelines will be subject to disciplinary action, up to and including dismissal.

ECRA encourages employees to bring their disputes or differences with other employees to the attention of their supervisors, the Principal or the Human Resources Administrator, before the situation escalates into potential violence. ECRA is eager to assist in the resolution of employee disputes, and will not discipline you for raising such concerns.

## **XVIII. MEDIA RELATIONS.**

Unless specifically authorized by the Governing Council, ECRA employees are not authorized to speak to media as a representative of ECRA. Only designated members of the Governing Council, or employees designated by the Council with express authorization, may make statements to the media. If an employee deems it necessary or important to express his/her opinions to the media, he/she must clarify that he/she is providing a personal opinion and that his/her statements are not intended to reflect the opinions, policies or practices of ECRA. With respect to school matters that are appropriate for public knowledge, it is ECRA policy to cooperate with news media inquiries and communicate truthfully with the media.

## **XIX. EMPLOYEE COMPLAINTS AND PROBLEM SOLVING**

The following grievance procedure is established for resolution of problems and disputes not described under other provisions in this handbook. This process does not apply to termination or discharge from employment. See Section XIX for procedures to follow when protesting termination actions.

Careful documentation is important to successful resolution of a conflict pursued under this policy. All documentation is to be included in the personnel file:

**1. Good Faith Effort.** The employee will make a good faith effort to work with the immediate supervisor to resolve the conflict. This effort will consist of problem identification, possible solutions, selection of resolution, process for implementation of resolution and scheduling follow-up. In the event that the complaint involves the immediate supervisor, the employee will work with that individual's supervisor.

**2. Written Grievance.** If the issue is not resolved after a good faith attempt as outlined above, the employee may submit the grievance in writing to the Principal (see #4 below) for the procedure to follow when the Principal is the subject of the unresolved complaint, the Governing Council is the next level at which to seek problem resolution. The written grievance may include documentation and other evidence. See Appendix E for the "Employee Grievance Report" form.

**3. Mediation.** Upon receipt of a written grievance, the Principal may interview witnesses and other parties in interest, meet with the complainant and/or the parties in interest and conduct an internal mediation of the dispute. If any party in interest, including the appointed mediator, can demonstrate a conflict of interest,



another mediator will be appointed. Any party may request that an outside professional mediator be hired. The Governing Council has final authority to determine if a professional mediator will be hired.

**4. Hearing.** If the problem remains unresolved, the complainant has the option to seek a hearing before the Governing Council by submitting a written complaint, this time to the Governing Council President, with documentation of the problem and all steps taken to resolve the problem. Legal council will not be admitted to participate in such a hearing. The hearing process will proceed as follows:

- a. Each party presents an oral statement and documentation.
- b. A designee of the Council will ask questions and examine witnesses if deemed appropriate and necessary.
- c. No recordings or transcripts of the meeting will be produced.
- d. Within two (2) weeks of the hearing, a Council designee will render the Council's decision with recommendations in writing.
- e. Procedures will remain confidential unless the complainant pursues remedies outside this internal grievance procedure.

**5. Final Decision.** Within five (5) business days of the hearing, the Governing Council President will submit a written decision concerning the complaint. The Governing Council's decision is final.

## **XX. TERMINATION AND DISCHARGE.**

### **A. Definitions.**

- 1. Termination.** In the case of a licensed employee, "termination" means non-renewal of a contract at the end of its term. For all other employees, "termination" means severing or ending the employment relationship.
- 2. Discharge.** Discharge means to sever the employment relationship of licensed personnel or employees under contract before the end of the existing contract.
- 3. Just cause.** Just cause refers to a reason for termination or discharge that is rationally related to an employee's competence or moral turpitude or the proper performance of his/her duties and that is not in violation of the employee's civil or constitutional rights.

### **B. Termination/Discharge Policy for Employees with Less than Three (3) Consecutive Years of Service.**

- 1. General.** ECRA may terminate an employee (licensed or non-licensed) with fewer than three (3) years of consecutive service for any reason it deems sufficient.
  - a. Non-contract employees. Employees with three (3) years or less of consecutive service and who are not employed pursuant to a contract are considered at-will employees. A written notice of termination will be provided to the employee.
  - b. Contract employees. Contract employees with three (3) years or less of consecutive service; i.e., who have not been reemployed under a third consecutive contract, may be terminated by non-renewal of their contracts without cause.

**2. Protest Procedure for Employees with Less than Three (3) Consecutive Years of Service.** For an employee of less than three (3) consecutive

years who was terminated or whose contract was not renewed, there is no protest procedure because such an employee may be terminated or not renewed without just cause. However, an employee of less than three (3) years may request a written explanation from the Principal that details the rationale for his/her termination or non-renewal. Requests for an explanation will be made in writing and delivered to the Principal no later than five (5) working days after receipt of the notice of termination or notice of non-renewal. Reasons for the determination will be provided to the employee within ten (10) days of receiving his/her request. The decision of the Principal to terminate is final and not subject to appeal.

### **C. Termination/Discharge Policy for Employees with Three (3) Years or More Years of Consecutive Service.**

**1. Non-Contract and Contract:** No employee who has been employed by ECRA for three (3) years or more of consecutive service may be discharged except for just cause.

**2. Protest Procedure.** ECRA provides the following procedures for challenges to termination or discharge decisions for employees with three (3) or more years of consecutive service:

a. Request for Statement of Rationale. An employee who has been employed by ECRA for three (3) consecutive years and who receives a notice of termination or notice of non-renewal may request a written statement of the reasons for non-renewal. The Principal will provide a written statement of the rationale within five (5) working days from the date she receives the request.

b. Hearing Before the Governing Council. If after receiving the Principal's written reasons for termination, the employee contends that the reasons do not constitute just cause, the employee will be granted permission to address his/her objections to termination to the Governing Council by following these steps:

i. The employee must submit a written request for a hearing before the Governing Council within ten (10) days after receiving the written rationale for termination from the Principal. The request for hearing must include a statement explaining why the employee believes that he/she was terminated for reasons that do not constitute just cause. In addition, the statement must include facts, supporting documentation and potential witnesses who will support the employee's position.

ii. The Governing Council will meet to hear the employee present the statement in no less than five (5) and no more than fifteen (15) working days after receipt of the employee's written statement of contentions. Written and verbal attempts will be made to inform the employee of the hearing date, time and place. The employee must respond within five (5) business days to confirm their attendance at the hearing. If the employee does not confirm their attendance at the hearing the hearing will be cancelled. The employee will be required to notify the school to re-schedule the hearing, which must be held within the statutory time frame unless waived by the governing council.

iii. At the hearing, both the employee and the Governing Council may have representation of their choice, but at their own expense.

iv. Rules for Hearing:

(A) The hearing will be conducted in accordance with the provisions of the Open Meetings Act.

(B) A designee of the Governing Council will first state the reasons for termination and present the factual support for those reasons. The reasons will be limited to those first provided to the employee after his/her request for an opportunity to address the Governing Council.

(C) The employee will next state his/her reasons and factual support for contending that the termination was not for just cause. Those reasons and factual support must be the same as those provided in the employee's written response to the statement provided by the Principal.

(D) The Principal may offer such rebuttal testimony that she deems appropriate.

(E) Each party may question all witnesses.

(F) Only evidence presented at the hearing will be considered and the Governing Council is only required to consider that testimony it considers reliable.

(G) No record will be kept of the hearing.

(H) The Governing Council will notify the employee and the Principal of its decision in writing within five (5) working days from the conclusion of the meeting.

[Reference, NMSA 1978 §22-10A-24.]

**D. Appeals from Determinations by Governing Council: Arbitration.** Either the terminated employee or other representatives of ECRA may appeal the decision of the Council. The matter will be appealed to an independent arbitrator who will hear all evidence as if presented for the first time. The arbitration process takes place as follows:

**1. Timely Request.** The employee must submit a request for appeal in writing that states his/her reasons for the appeal to the President of the Governing Council within five (5) working days from the receipt of the Governing Council's written decision. The request for appeal must include a statement of facts supporting the basis for appeal. Failure to submit a timely appeal will bar the employee's objection to the decision of the Governing Council and will render the Governing Council's decision final.

**2. Selection of Arbitrator.** The Governing Council and the employee will meet within ten (10) working days from the receipt of the employee's request for appeal to select an independent arbitrator. If they cannot make a choice, they will ask the presiding judge of the Second Judicial District Court for the State of New Mexico to select an individual to hear the matter. The judge will make the selection within five (5) days of the request. The arbitrator selected must be experienced in school employment matters and must have no financial, personal or other direct interest in the outcome of the proceeding.

**3. Scope of Arbitration.** The arbitrator will hear all of the evidence presented and not be limited to a review of the Governing Council's decision. The issue before the arbitrator will be limited to whether the evidence presented demonstrates just cause for termination.

**4. Date of Arbitration.** The arbitration will be held within thirty (30) working days from the date the arbitrator is selected. Notice of the hearing will be provided by the arbitrator, which will include the date, time and location of the hearing.

**5. Rules of Arbitration:**

a. ECRA and the employee may have representation of their choosing, but at their own expense;

b. Discovery will be limited to depositions and requests for production of documents on a time schedule to be determined by the arbitrator;

c. The arbitrator has the power to issue subpoenas for witnesses and documents and to administer oaths;

d. The New Mexico Rules of Civil procedure will not be strictly enforced, however, the rules will apply to the extent that both contentions and responses are amply and fairly presented;

e. The Rules of Evidence will not strictly apply, but the arbitrator will permit either party to call and examine witnesses, to cross-examine witnesses and to introduce evidence. The arbitrator will require reasonable substantiation of statements and authentication of records where the accuracy or truth is in reasonable doubt;

f. The Governing Council will have the burden to show by a preponderance of evidence that the employee was terminated for reasons that constitute just cause.

g. If the Governing Council cannot show just cause, or the employee sufficiently rebuts the Governing Council's reasons, then the arbitrator will reverse the decision to terminate and order reinstatement of the employee;

h. Either the employee or ECRA may record the proceeding at their own expense, but it will not constitute an official record for purposes of further appeal.

i. Departures from these procedures are considered harmless unless the party can demonstrate prejudice.

**6. Decision.** The arbitrator will issue a written decision within thirty (30) working days of the hearing, which will contain findings of fact and conclusions of law.

**7. Remedies.** The only remedies available to an employee who has been reinstated by the decision of an arbitrator are: reinstatement; back pay, but subject to any scheduled salary increase to which the employee may be entitled; or, both, less an offset for any compensation received by the employee during the period the compensation was terminated; e.g., unemployment benefits.

**8. Binding Decision.** Decisions by the arbitrator are final and binding on both ECRA and the employee. The decision may not be appealed unless the decision was procured by corruption, fraud, deception or collusion, in which case it will be appealed to the Second Judicial District Court for the State of New Mexico.

9. **Costs/Fees.** The employee and ECRA will pay their own fees, expenses and costs. The arbitrator can assign to either party or both parties the fees and costs of the independent arbitrator.

**E. Report to PED.** ECRA will report to the Albuquerque Public Schools all terminations and all actions arising from terminations annually. APS is required to report the terminations to the NMPED. [Reference NMSA 1978 §22-10A-25 (2003)]

**F. Termination/Discharge Policy for Other Personnel Exempt From Protest Procedures:** In addition to employees who have less than three (3) consecutive years of employment, the rights to due process protests upon termination do not apply to the following ECRA personnel:

1. Certified school instructors employed to fill the position of certified school instructor entering military service;
2. Persons employed as licensed school administrators;
3. Non-certified school employees employed to perform primarily school-wide management functions. [Reference, NMSA 1978 §22-10A-26 (2003)]

**G. Termination/Discharge Policy for Contract Employees Discharged Prior to Contract Term.** A contract employee may be discharged prior to the end of his/her contract term for just cause according to the following procedures:

**1. Notification and Immediate Removal.**

**a. Notice of discharge.** The Principal will serve written notice (certified mail return receipt requested) or will arrange personal delivery retaining a receipt signed and dated by the employee, of intent to recommend to the Governing Council that the employee be discharged. Service otherwise consistent with the rule of civil procedure will be sufficient to complete service as meant by these provisions.

**b. Stated reasons.** The notice will include the reasons for the Principal's recommendation that the employee be discharged along with a written description of the employee's right to a hearing before the Governing Council.

**c. Immediate Removal.** In the event that the Principal determines that it is necessary to immediately remove the employee from the school premises, the employee will be placed on paid administrative leave pending the outcome of a hearing on the recommended discharge. The hearing will take place prior to discharge unless the employee presents a risk of harm to self, students, employees or the continued operations of ECRA.

**2. Protest Procedure/Hearing.** A contract employee who receives a notice of intent to recommend discharge may request a hearing before the Governing Council by giving the Principal a written notice of his/her decision to request a hearing within five (5) working days of receipt of the notice to recommend discharge.

**a. Date of Hearing.** If the employee timely notifies the Principal that he/she is requesting a hearing on the recommendation for discharge, a hearing will be scheduled by for no less than twenty (20) and no more than forty (40) working days after the Principal receives the written election from the employee. The employee will have at least ten (10) working days prior notice of the hearing date.

**b. Hearing Procedures.**

i. ECRA and the employee may have representation of their choosing and at their own expense.

ii. Discovery will be limited to depositions and request for production of documents, which will be completed prior to the hearing.

iii. The Governing Council will have the authority to issue subpoenas for the attendance of witnesses and to produce documents and other evidence at the request of either party and will have the power to administer oaths.

iv. ECRA will have the burden of proving the just cause for discharge by a preponderance of the evidence. The evidence at hearing will be limited to the reasons as stated in the notice to the employee recommending the discharge.

v. ECRA will present its evidence first; the employee will present second; either party may present witnesses and introduce documents to prove their respective case.

vi. An official record must be kept of the preceding and the employee is entitled to one copy at the expense of ECRA.

vii. The Governing Council will render its written decision within twenty (20) calendar days of the conclusion of the hearing and deliver its decision to the employee by certified mail return receipt requested or by personal delivery.

**3. Appeal from Decision on Discharge: Arbitration.** Either the discharged contract employee or a representative(s) of ECRA may appeal the decision of the Governing Council. The matter will be appealed to an independent arbitrator who will hear all evidence as if presented for the first time.

**a. Request Appeal/Arbitration.** To request an appeal the employee must state his reasons for the appeal in writing (“request for appeal”) and submit it to the President of the Governing Council within five (5) working days from the receipt of the Governing Council’s written decision. The appeal must contain a statement of the particular reasons the employee believes the Governing Council’s decision was incorrect and include a statement of facts supporting his/her decision.

**b. Timely Appeal.** Failure to submit a timely appeal will bar the employee's right to object to the decision of the Governing Council and will render the Governing Council’s decision final.

**c. Selection of Arbitrator.** The Governing Council and the employee will meet within ten (10) working days from the receipt of the employee’s request for appeal to select an independent arbitrator. If they cannot decide they will request the presiding judge of the Second Judicial District Court for the State of New Mexico to select an individual to hear the matter. The judge will make the selection within five (5) days of the request. The arbitrator selected will be experienced in school employment matters. He/she will have no financial, personal or other direct interest in the outcome of the proceeding.

**d. Scope of Review.** The arbitrator will hear all of the evidence presented and not be limited to a review of the Governing Council’s decision. The issue before the arbitrator will be limited to whether the evidence presented demonstrates just cause for discharge.

**e. Date of Arbitration.** The arbitration will be held within thirty (30) working days from the date the arbitrator is selected. Notice of the hearing will be provided by the arbitrator, which will include the date, time and location of the hearing.

**f. Arbitration Rules:**

i. ECRA and the employee may have representation of their choosing, but at their own expense;

ii. Discovery is limited to depositions and requests for production of documents on a time schedule to be determined by the arbitrator;

iii. The arbitrator has the power to issue subpoenas for witnesses and documents and to administer oaths;

iv. The New Mexico Rules of Civil procedure will not be strictly enforced, however, the rules will apply to the extent that both contentions and responses are amply and fairly presented;

v. The Rules of Evidence will not strictly apply, but the arbitrator will permit either party to call and examine witnesses, to cross-examine witnesses, and to introduce evidence. The arbitrator will require reasonable substantiation of statements and authentication of records where the accuracy or truth is in reasonable doubt;

vi. The Governing Council will have the burden to show by a preponderance of the evidence that the reasons provided for recommended the employee's discharge constitute just cause;

vii. If the Governing Council cannot show just cause, or the employee sufficiently rebuts the Governing Council's reasons, then the arbitrator will find in favor of the employee;

viii. Either the employee or ECRA may record the proceeding at their own expense, but it will not constitute an official record for purposes of appeal; only the official record prepared by a certified court reporter will constitute the official record;

ix. Departures from these procedures are considered harmless unless the party can demonstrate prejudice;

x. Decision. The arbitrator will issue a written decision within thirty (30) working days of the hearing, which will contain findings of fact and conclusions of law;

xi. Final Decision. Decisions by the arbitrator are final and binding on both ECRA and the employee; the decision may not be appealed unless the decision was procured by corruption, fraud, deception or collusion, in which case it will be appealed to the Second Judicial District Court for the State of New Mexico.

xii. Costs/Fees. The employee and ECRA will pay their own fees, expenses and costs; the arbitrator may assign to either party, or both of them, the fees and costs of the independent arbitrator.

xiii. Compensation after discharge. Payment of compensation to any certified school instructor or certified administrator will terminate as of the date a final decision, provided by the Governing Council, if not appealed, or by the arbitrator. If the contract is to be paid monthly during a twelve (12) month period for services to be performed during a period less than twelve (12) months, the person will be entitled to a pro rata share of the compensation payments due for the period during the twelve (12) months in which no services were to be performed.

**H. Phasing Out and Elimination of Positions/Reduction-in-Force.** From time-to-time, it may be necessary to phase-out or eliminate certain job classifications or reduce the number of positions in a particular employment category. An orderly process will be established by the ECRA Reduction in Force Policy to guide such phase-out or reduction in force. A reduction in force carried out pursuant to ECRA's policy is just cause for termination or discharge.

## **XXI: Employee Discipline.**

ECRA employees are expected to comply with ECRA standards of behavior and performance and any noncompliance with these standards must be remedied.

**A. Procedure for Progressive Discipline.** Under normal circumstances, ECRA endorses a policy of progressive discipline in which it attempts to provide employees with notice of deficiencies and an opportunity to improve. However, the Principal has the discretion to administer any level of discipline at any time at his or her sole discretion without first administering any prior warning or following these steps of progressive discipline. These steps are general guidelines and not intended to create any contractual right in the process outlined below.

**1. Verbal Warning.** If an employee is not meeting ECRA standards of behavior or performance, the employee's supervisor or the Principal should meet with the employee to discuss the matter; inform the employee of the nature of the problem and the action necessary to correct it; and prepare a memorandum for the supervisor's own records indicating that the meeting took place and a verbal warning was communicated.

**2. Written Warning.** If there is a second occurrence, the supervisor or the Principal should hold another meeting with the employee and issue a written reprimand to the employee; warn the employee that a third incident will result in more severe disciplinary action, including suspension without pay or termination or discharge; and prepare and forward a written report describing the first and second incidents and summarizing the action taken during the meeting with the employee.

**3. Suspension without pay.** ECRA reserves the right to implement suspension without pay as a disciplinary measure. Prior to implementing suspension without pay, ECRA will develop appropriate policies and procedures. Generally, an employee will not be suspended for more than nine (9) days and will be provided rudimentary due process prior to suspension.

**4. Discharge/Termination.** The supervisor or Principal should prepare a written report describing the occurrences, indicating the timing between the occurrences and summarizing the justification for recommending discharge to the Governing Council. The progressive disciplinary procedures described above may also be applied to an employee who is experiencing a series of unrelated problems involving job performance and/or behavior.

**5. Investigation.** When a disciplinary action is proposed, the Principal (or designee) may conduct an appropriate investigation to obtain relevant facts involved. The Principal or designee will determine the accuracy of the charge(s) against the employee. The investigation may include, but is not limited to eyewitness accounts, documented records, work samples and employee's view of the incident and/or charges. Prior to interviewing the alleged offending employee, he/she will be advised of the purpose of the meeting. The supervisor in conjunction with Principal (or designee) will compile all documents and take accurate notes of the investigation. Documentation citing the disciplinary action will be prepared by the supervisor in conjunction with Principal or her designee. The supervisor and Principal (or designee) will meet with the employee and review the disciplinary action.



**6. Grievance Process.** Employees who believe that they have been disciplined too severely or without good cause may utilize the procedure outlined in Section XVIII.

**B. Documentation of action.** The supervisor and Principal or her designee will meet with the employee and review the disciplinary action and ask the employee to sign the report of disciplinary action. Once the employee has signed the report, he/she should be given a copy of the document with all signatures affixed. If the employee refuses to sign the document, this is to be noted on the form. The original becomes a part of the employee's permanent personnel record, which is considered school confidential material. If an employee disagrees with the action, he/she may draft a rebuttal to be attached to the report, which will be kept in the employee's personnel file.

**C. Remediation.** If no disciplinary action is required within twelve (12) months of any written warning, all disciplinary action forms are removed from the employee's personnel file. These forms are not destroyed -- only removed to a separate file apart from the employee's record.

Appendix A

HARASSMENT COMPLAINT FORM

Name: \_\_\_\_\_

I wish to complain about the following events:

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(Use additional sheets of paper if required)

Do you wish ECRA to investigate your complaint? \_\_\_\_ Yes \_\_\_\_ No (check one)

If you have checked "No," please state your reasons:

You should be aware that the nature of your complaint may require ECRA to investigate it, even if you request otherwise. Should you wish ECRA not to disclose certain information you have provided to ECRA, please specify that information below. ECRA will try to honor such requests consistent with its obligation to identify and correct

instances of harassment, including sexual harassment. Confidentiality may not always be possible because of the steps necessary to eliminate the harassment.

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Signature of Employee

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Date