

SECTION XIII APPEAL PROCEDURES

13.1 INITIAL APPEAL PROCEDURES

13.1.1 Right of Appeal

Any decision or determination made by the Director in respect to any matter set forth in this Handbook, which a student, employee, or school is aggrieved, may be appealed to the Appeals Review Committee.

13.1.2 Notice of Appeal

Pursuant to the January 24, 2007 ruling of the Board of Directors, appeals shall be initiated by the member school by completing the "Request for Appeal" form posted online at www.nmact.org and delivering said Request to the Director within fourteen (14) calendar days of date of receipt or constructive receipt of the decision or determination being appealed. Failure to comply strictly with the time frame or process for making an appeal shall be sufficient grounds for denial of the appeal. The Request for Appeal must additionally be signed by the Athletic Director and Superintendent/Headmaster/CEO acknowledging a minimum appeal fee of \$250 not to exceed \$500 to cover a portion of the NMAA appeal expenses. If the appeal results in the modification or overturning of the original ruling, the appeal fee will be waived. Fees cannot be charged to the student or the student's family either directly or indirectly. (Please note, once the process of appeal has been initiated, additional financial obligations by the school may be incurred through subsequent levels of appeal.)

13.1.3 Conduct of Review Committee Meetings

- A.** Meetings of an Appeals Review Committee to hear an appeal will be held within fourteen (14) calendar days of the date the appeal is received. Each party to an appeal shall have ample time to present any and all matters which are relevant to the case. The school may submit written statements, not to exceed ten pages, of their positions, citing evidence presented. Any testimony given shall be recorded for purposes of the appeal. The school shall proceed first, unless a different order is determined by the Review Committee. All documents and other physical evidence shall be submitted by the parties to the Review Committee and retained by the Review Committee pending its determination and any additional appeal.
- B.** Evidence and testimony at Appeals Review Committee meetings/hearings shall be informal, but shall follow generally accepted rules and procedures for ensuring due process. All matters considered in the decision being appealed shall be presented by the decision maker and considered by the Review Committee. New evidence shall not be allowed unless (a) it was unknown at the time of the decision which is being appealed, (b) it is significant to the decision being appealed or the consideration of the appeal, and (c) there exists a reasonable justification for it not being presented earlier.

13.1.4 Standard of Review

The decision being appealed shall be affirmed by the Appeals Review Committee if substantial support for the decision exists in the record and/or in the new facts, if any, presented to the Review Committee.

13.1.5 Participation Procedures in Appeals Review Committee Meetings/Hearings

- A. Appeals by Schools:** The superintendent, administrative head of the school or district and other persons with pertinent information shall present the background and introduce the case and other persons, when applicable, for testimony. Parents and Students directly affected are encouraged to be present at the Appeals Hearing.
- B. Appeals by Parents:** Procedurally, appeals must be initiated by a Request for Appeal from the school of the aggrieved party.
- C. Coaches/Advisors:** A school administrator must be present and introduce the coach/advisor before the coach/advisor may speak, unless the school administrator designates an individual to serve as the presenter for the agenda item submitted.
- D. Others:** A school administrator shall accompany guests, parents or any other party, when the agenda item being considered affects the school's status, personnel and/or students.
- E. Limitations:** While the NMAA desires its meetings to be accessible to the members and to others who may be interested in the proceedings, some limitation may be placed upon individuals who wish to actively participate in appeals cases. Generally, it is appropriate for a school administrator to be present and take part in any discussion/case which affects his/her particular school.

13.1.6 Appeal Review Committee Decisions

The Review Committee shall issue its decision on an appeal in writing to the parties within fourteen (14) calendar days of the Review Committee meeting to hear the appeal. In affirming or denying the appeal, the Review Committee may direct actions to be undertaken by the parties not inconsistent with the articles, bylaws, rules and regulations of the NMAA.

13.2 APPEAL TO BOARD OF DIRECTORS OF APPEALS REVIEW COMMITTEE DECISION

13.2.1 Right of Appeal

Any decision or determination referenced above, in which a student, employee, or school is aggrieved, may be appealed to the Board.

13.2.2 Notice of Appeal

Appeals to the Board shall be initiated by a letter in writing from the aggrieved party identifying and attaching a copy of the decision or determination which is being appealed. The letter shall be sent to the Chairperson of the Board or the Director and must be postmarked, if sent via the United States mail, or delivered within fourteen (14) calendar days of the date of receipt or constructive receipt of the decision or determination being appealed. Failure to comply strictly with the time frame or process for making an appeal shall be sufficient grounds for denial of the appeal.

13.2.3 Matters Considered

The appeal will be evaluated based upon the record created below and submitted to the Board. The record shall be delivered to the Board not later than fourteen (14) days prior to the meeting of the Board at which the appeal is to be considered.

13.2.4 Standard of Review

The decision being appealed shall be affirmed by the Board if substantial support for the decision exists in the record as a whole.

13.2.5 Conduct of Hearings

Meetings of the Board to hear an appeal will be as scheduled by the Board, but no later than the next regularly scheduled meeting of the Board. Each party to an appeal may, at the determination of the Board, have ample time to address the Board on the appeal. The parties may submit written statements, not to exceed ten pages, of their positions, citing evidence presented. Any testimony given shall be recorded for purposes of the appeal. All documents and other physical evidence shall be submitted by the parties to the Board shall be part of the record on appeal.

13.2.6 Decisions

The Board shall issue its decision on an appeal within fourteen (14) calendar days. In affirming or denying the appeal, the Board may direct actions to be undertaken by the parties not inconsistent with the articles, bylaws, rules and regulations of the NMAA.

13.3 APPEAL TO STATE PUBLIC EDUCATION DEPARTMENT

13.3.1 State Administrative Review Procedure – SBE Regulation No. 95-10 Section V

“STATE ADMINISTRATIVE REVIEW PROCEDURE”: The following requirements apply to the state administrative review of decisions of the New Mexico Activities Association:

- A.** A decision of the New Mexico Activities Association, in which a party is aggrieved, may be appealed to the Secretary of Public Instruction or his/her designee after all New Mexico Activities Association grievance and appeal procedures have been followed.
- B.** All requests for state administrative review shall be made in writing to the Secretary of Public Instruction and be filed with his/her office within fourteen (14) calendar days of the date of mailing of the decision of the New Mexico Activities Association’s review authority. Please submit your request to Dr. Veronica Garcia, Cabinet Secretary of Education, 300 Don Gaspar Avenue, Jerry Apodaca Education Building, Santa Fe, New Mexico 87501-2786. Filing shall be accomplished when the request for state administrative review is received in the office of the Secretary of Public Instruction. The aggrieved party shall further send a copy of the request for state administrative review to the Executive Director of the New Mexico Activities Association.

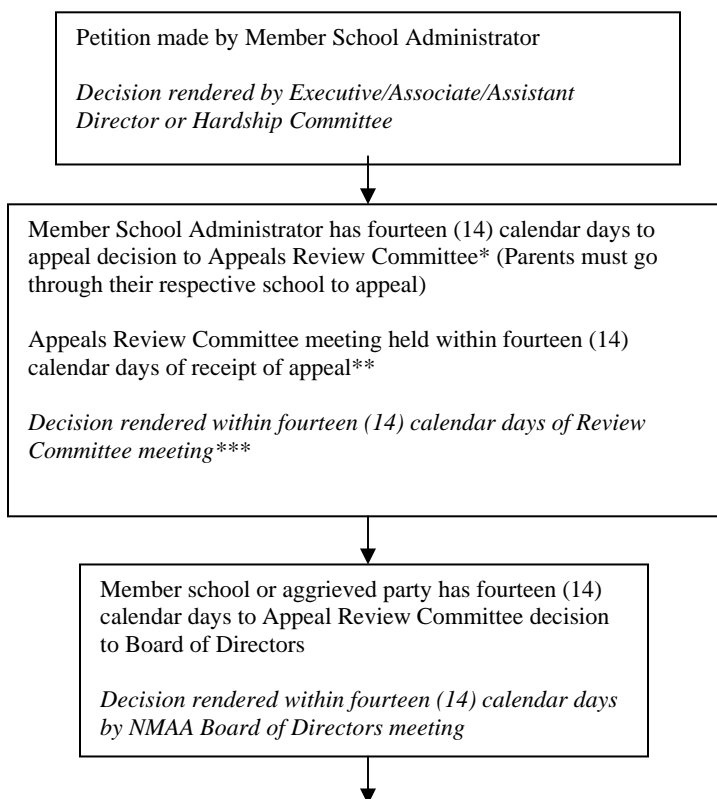
The request for state administrative review shall be signed by the aggrieved party or his/her designated representative and shall state specifically the questions raised before the New Mexico Activities Association’s review authority which the State Superintendent of Public Instruction is requested to review with reference to the applicable rules of the New Mexico Activities Association.

- C.** Within seven (7) calendar days of the receipt of the copy of the request for state administrative review, the Executive Director of the New Mexico Activities Association shall send to the State Superintendent of Public Instruction by certified mail the decision of the New Mexico Activities Association’s review authority; the record of the hearing before the review authority, including any exhibits admitted into evidence before the review authority, and the document evidencing the date on which the decision of the review authority was mailed to the aggrieved party.

- D. The Secretary of Public Instruction may appoint a state Administrative Review Panel consisting of a member selected by the State Education Agency, a member selected by the Executive Director of the New Mexico Activities Association and an independent member selected by the other two members of the State Administrative Review Panel to review the decision of the New Mexico Activities Association. No person who participated in the New Mexico Activities Association grievance and appeal procedures and no member of the State Education Agency shall serve on the State Administrative Review Panel. In the event, however, that the Secretary of Public Instruction determines that extenuating circumstances exist, he/she may appoint a hearing officer to review the decision of the New Mexico Activities Association.
The State Administrative Review Panel or the hearing officer shall provide a recommended decision, including recommended findings and the basis for such findings, to the State Superintendent of Public Instruction within twenty-five (25) calendar days of the filing of the request for state administrative review.
- E. The review by the State Superintendent of Public Instruction or his/her designee(s) shall be on the record and shall be limited to the questions raised in the hearing before the New Mexico Activities Association's review authority and set forth in the request for state administrative review.
- F. The State Superintendent of Public Instruction shall issue a written decision, including findings of fact and the basis for such findings, within thirty (30) calendar days of the filing of the request for state administrative review, unless such time is extended by the State Superintendent of Public Instruction for good cause. Such written decision shall be sent to the parties by certified mail.

13.4 APPEAL PROCESS FLOWCHART

SCHOOL APPEAL PROCESS



Member school or aggrieved party has fourteen (14) calendar days to Appeal NMAA Board of Directors' decision to NM Public Education Department

Decision rendered within thirty (30) calendar days by State Administrative Review Panel unless such time is extended by good cause

*Note: Appeals Review Committee is made up of Superintendents/CEOs/Headmasters from the Membership

** Note: A minimum of three Committee members must be present (via telephone conference) in order to render a decision.

***Note: A verbal decision will be made to the AD/Principal as soon as decision is made.