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# New Mexico Register

The official publication for all official notices of rulemaking  
and filing of proposed, adopted and emergency rules.

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## **The New Mexico Register**

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# New Mexico Register

Volume XXX, Issue 21

November 12, 2019

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## Notices of Rulemaking and Proposed Rules

### LIVESTOCK BOARD

#### NEW MEXICO LIVESTOCK BOARD REGULAR MEETING AND RULE MAKING NOTICE

The New Mexico Livestock Board has scheduled a regular board meeting and rule hearing on December 12, 2019, beginning at 9:00 a.m. at the 2019 Joint Stockmen's Convention being held at the Sandia Resort and Casino, Ballroom B, 30 Rainbow Road, Albuquerque, New Mexico, 87113, to hear and consider action as appropriate on the proposed amendments to 21.30.6 NMAC, Sections 8, 9, 11 and 16.

#### Synopsis:

The proposal is to adopt changes to the import requirements rule, 21.30.6 NMAC, which will become effective December 31, 2019.

The proposed changes include: 1) including slaughter surveillance to the importation testing; 2) requiring only imported non-virgin bulls be accompanied by a negative *T. foetus* test; 3) Allowing castrated bulls to be removed from confined feeding; 4) requiring culled herd sires sold for slaughter to have a negative *T. foetus* test within sixty (60) days prior to change of ownership; 5) allowing for pending results on slaughter bulls; 6) requiring NMLB inspection to verify change of possession and appropriate *T. foetus* testing and placing responsibility for testing on the owner; 7) allowing for cutter bulls, out of state cull bulls and slick bulls to be castrated rather than tested and sent for confined feeding; 8) requiring culled herdsires with medical conditions to be tested at the owners expense and allowing NMLB inspector or herd veterinarian to exempt bulls with medical conditions if inhumane; 9) requiring the working Trichomoniasis Committee to reevaluate the need for slaughter surveillance every two years; 10) requiring a minimum of 65 consecutive days to conduct a third *T. foetus* after the bulls have had breeding exposure; 11) if a disease management

plan has not been developed and activated within 45 days (from 30) of confirmation of *T. foetus* testing all bovinds, except steers and spayed heifers, will be required to go directly to slaughter upon leaving the ranch; 12) requiring any stray non-virgin bull of unknown *T. foetus* status or from a positive *T. foetus* herd which enters neighboring land and may have comeingled with the herd on that premise to be quarantined until the bull(s) has had one or more official *T. foetus* test(s) conducted with a NMLB inspector involved; 13) requires all facilities that share a common boundary with a positive *T. foetus* herd be notified by the NMLB and require testing; 14) exempting Certified NM *T. foetus* Free herds in compliance with NMAC 21.30.6.10 from testing as well as instances where the state veterinarian has determined such testing to be unnecessary based on epidemiological investigation and requires reevaluation of this requirement to be reevaluated by the working Trichomoniasis Committee every two years; 15) enforcing the provisions of Chapter 30, Article 18 NMSA 1978 and other criminal laws relating to livestock 16) outlining penalties for misdemeanor crimes. A full text of changes will be available on the Agency's website at: [www.nmlbonline.com](http://www.nmlbonline.com).

Interested persons may submit comments on the proposed changes to 21.30.6 NMAC at: [www.nmlbonline.com](http://www.nmlbonline.com) or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on December 12, 2019. The final proposed rule will be voted on by the Board during a public meeting on December 12, 2019. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on December 12, 2019.

Full copies of text of the proposed new rule and the agenda can be obtained from the New Mexico Livestock Board, 300 San Mateo NE, Suite 1000, Albuquerque, New Mexico 87108, or from the Agency's website at [www.nmlbonline.com](http://www.nmlbonline.com).

[nmlbonline.com](http://nmlbonline.com). Please contact the NMLB at (505)841-4742, or the Agency's website at [www.nmlbonline.com](http://www.nmlbonline.com) for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the Livestock Code 77-2-7, et seq. NMSA 1978; Livestock Board's power to establish rules and regulations 77-2-7, et seq. NMSA 1978.

### PUBLIC EDUCATION DEPARTMENT

#### NOTICE OF PROPOSED RULEMAKING

**Public Hearing.** The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing on Monday, December 16, 2019 from 10 a.m. to 12 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The purpose of the public hearing is to receive public input on the proposed repeal of 6.12.9 NMAC, Elementary School Free Breakfast Program During Instructional Time to be replaced with 6.12.9 NMAC, Breakfast Program, and the proposed repeal of 6.30.3 NMAC, Eligibility for the General Educational Development Tests (GED Tests) and Diploma in NM to be replaced with 6.30.3 NMAC, Eligibility for the High

School Equivalency Assessment or Programs and Diploma in NM. At the hearing, the PED will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

**Explanation of Purpose and Summary of Text**

The purpose of the proposed repeal of **6.12.9 NMAC, Elementary School Free Breakfast Program During Instructional Time**, to be replaced with **6.12.9 NMAC, Breakfast Program** is to establish the standards, procedures for waiver requests and the award of waivers, and procedures for funding necessary to implement the breakfast program established by Section 22-13-13.2 NMSA 1978.

The purpose of the proposed repeal of **6.30.3 NMAC, Eligibility for the General Education Development Tests (GED TESTS) and Diploma in NM**, to be replaced with **6.30.3 NMAC, Eligibility for the High School Equivalency Assessment or Programs and Diploma in NM** is to give individuals who have not graduated from high school the opportunity to earn a high school equivalency credential or department-issued New Mexico high school diploma, and to establish criteria for a high school equivalency publisher or program provider to become qualified to administer a high school equivalency credential assessment or program in the state of New Mexico.

**Statutory Authorization(s):**

Sections 9-24-8, 22-1-9.2, 22-2-1, 22-2-2, 22-2-8.8, 22-2-8.14, 22-12A-4, 22-13-1.1, 22-13-13.2, and 43-1-3 NMSA 1978.

No technical information served as a basis for this proposed rule change.

**Public Comment.** Interested parties may provide comment at the public hearing or may submit written comments by mail to John

Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, by electronic mail to [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or by fax to (505) 827-6520. All written comments must be received no later than 5 p.m. (MDT) on Monday, December 16, 2019. The PED encourages the early submission of written comments. The public comment period is from November 12, 2019 to December 16, 2019 at 5:00 p.m. (MDT).

The PED will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled, "Rule Notification," on the PED's website at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or may be obtained from John Sena at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact John Sena at (505) 570-7816 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

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**End of Notices of Rulemaking and Proposed Rules**

## Adopted Rules

### Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

### EDUCATIONAL RETIREMENT BOARD

**This is an amendment to 2.82.2 NMAC, Sections 9 and 11, effective 11/12/2019.**

#### 2.82.2.9 REGULAR MEMBERS:

**A.** In four-year colleges, technical and vocational institutes and community or junior colleges, public school districts, and state operated schools, “regular members” shall be all employees other than retired members, ~~[participants in the return to work program, participants in the return to work exception;]~~ retired members working in the return to work program under 2.82.5.15 NMAC, retired members working full time equivalency (“FTE”) .25 FTE or less under 2.82.5.16 NMAC, participants in the alternative retirement plan (ARP) or employees excluded under 2.82.2.11 NMAC.

**B.** Any member except retired members ~~[participating in the return to work program, participants in the return to work exception]~~ working in the return to work program under 2.82.5.15 NMAC, retired members working .25 FTE or less under 2.82.5.16 NMAC, participants in the alternative retirement plan (ARP), or employees excluded under 2.82.2.11 NMAC, who is regularly employed in any of the following local administrative units, shall be a “regular member” if the member holds a license issued by the public education department at the time of commencement of employment in such local administrative units:

- (1) northern New Mexico college;
- (2) New Mexico boys’ school;
- (3) girls’

- welfare home;
- (4) Los Lunas medical center;
- (5) public education department;
- (6) educational retirement board;
- (7) New Mexico school for the blind and visually impaired;
- (8) New Mexico school for the deaf;
- (9) New Mexico activities association; and
- (10) regional education cooperatives.

**C.** Except retired members ~~[participating in the return to work program, participants in the return to work exception;]~~ working in the return to work program under 2.82.5.15 NMAC, retired members working .25 FTE or less under 2.82.5.16 NMAC, participants in the alternative retirement plan (ARP) or employees excluded under 2.82.2.11 NMAC, regular membership is a condition of employment and all local administrative unit employees who qualify as “regular members” must be covered under the Educational Retirement Act, commencing with the first day of employment.

**D.** Except retired members ~~[participating in the return to work program, participants in the return to work exception;]~~ working in the return to work program under 2.82.5.15 NMAC, retired members working .25 FTE or less under 2.82.5.16 NMAC, participants in the alternative retirement plan (ARP) or employees excluded under 2.82.2.11 NMAC, any person regularly employed, whether full-time or part-time, in any state institution or agency described in Subsection B of 2.82.2.8 NMAC, shall be a regular member if employed in an educational program and holds a license issued by the

public education department. [2.82.2.9 NMAC - Rp, 2.82.2.9 NMAC, 10/31/2017; A, 11/12/2019]

#### 2.82.2.11 EMPLOYEES EXCLUDED FROM COVERAGE:

**A.** Any person enrolled as a student in any of the local administrative units outlined in Subsection A of 2.82.2.8 NMAC, and who is also employed by the local administrative unit in which he is enrolled, shall be considered a student and not eligible for either “regular” or “provisional” membership under the Educational Retirement Act, except that members of the faculty or full-time staff, who may be incidentally enrolled in classes, shall not be affected by this rule. Under no circumstances shall graduate assistants, teaching fellows, or students in positions of similar nature, be considered eligible for coverage under the Educational Retirement Act. This includes any and all participation in the teacher enhancement program or participation in similar graduate programs.

**B.** Any person whose full time equivalency (“FTE”) is .25 or less, and who is not a covered employee of another local administrative unit, shall not be covered for contribution purposes. On and after July 1, 2020, a retired member who has returned to employment at a level of .25 FTE or less, regardless of salary level, shall make nonrefundable contributions to the fund as would be required by Section 22-11-21 NMSA 1978 if the retired member were a non-retired employee. For purposes of calculating a person’s FTE, employment with all local administrative units shall be aggregated. Any person employed on July 1, 1994 who was then covered under the Educational Retirement Act



shall continue to be covered for the duration of that employment.

C. Any employee engaged on a day-to-day basis to replace another employee who is temporarily absent shall be considered a “substitute” and shall not be covered under the Educational Retirement Act. An employee engaged to fill a vacant position (including a position vacated by an extended leave of absence) is not considered a “substitute” and must be covered under the Educational Retirement Act.

D. Independent contractors who perform services for local administrative units on a fee basis are not eligible for membership under the Educational Retirement Act as a result of having performed such service, and sums paid for such service shall not be covered for purposes of contributions. The following factors shall be considered in determining whether an individual qualifies as an independent contractor:

(1) registration with the New Mexico department of taxation and revenue to pay gross receipts tax;

(2) the existence of a written contract with the local administrative unit setting forth the services to be provided and the compensation to be paid;

(3) whether the person receives benefits such as paid annual or sick leave, health insurance and other benefits that the local administrative unit provides its regular employees or is paid as an employee by the local administrative unit;

(4) whether the person satisfies internal revenue service guidelines for determining that an individual is an independent contractor rather than an employee;

(a) as necessary, the director shall make available forms for use by local administrative units for use in making this determination;

(b) the board reserves the right to examine the complete forms, contracts and other agreements, and any other materials as may

be necessary for the purpose of determining whether an individual is an independent contractor or employee.

E. All students enrolled in any public school, grades 1-12.

F. Any person retired pursuant to the Public Employees Retirement Act (“PERA”) who is hired prior to July 1, 2019 by a local administrative unit as a certified police officer shall not make contributions to the fund. If subsequent termination of employment occurs, followed by re-employment as a police officer or in any other capacity on or after July 1, 2019, with either the same or a different local administrative unit, the provisions of Subsection B of Section 22-11-25.2 NMSA 1978 shall not apply and such person shall make contributions to the fund.

(1) For purposes of Subsection B of Section 22-11-25.2 NMSA 1978, “police officer” means an officer who is certified pursuant to the Law Enforcement Training Act and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal or traffic or highway laws of the state. For example, a university police officer, whose duty is to enforce the laws of the state, albeit within the boundaries set forth in Subsection B of Section 29-5-2 NMSA 1978, is a “police officer”. Examples of employees who are not police officers include, but are not limited to, police dispatchers, administrative staff and security guards.

(2) Whether an employee is considered a police officer will be based primarily on the employee’s specific job duties. A mere connection to law enforcement activity is insufficient by itself to meet the definition of police officer. An employee will not be considered a police officer unless his or her primary responsibility is the prevention and detection of crime or the enforcement of the penal or traffic or highway laws of the state.

(3) The local administrative unit that employs the police officer shall make contributions to the fund as provided in the Educational Retirement Act.  
[2.82.2.11 NMAC - Rp, 2.82.2.11 NMAC, 10/31/2017; A, 11/12/2019]

## EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.3 NMAC, Sections 8, 10 and 12, effective 11/12/2019.

### 2.82.3.8 SALARY COVERED; SALARY EXCLUDED:

A. Except as otherwise set forth herein and subject to the limitations set forth in Section 22-11-21.2 NMSA 1978, a member’s annual salary for the purpose of contributions to the fund and computation of the member’s benefit shall consist of total compensation or wages paid to the member for services rendered during each of the four calendar quarters of a fiscal year, beginning July 1 and ending June 30 [~~excluding any salary earned while employed under the return to work program of the Educational Retirement Act~~]. For purposes of determining contribution rates, a member’s expected annual salary at the beginning of the fiscal year shall be considered. When relevant, a member’s annual salary shall take into consideration the FTE of the position and the aggregation of salaries if the member will have multiple positions with the same or other local administrative units during the fiscal year. If a member’s total annual salary is more than [~~\$20,000~~] \$24,000, the member shall be subject to the contribution rate set forth in Subsection A of Section 22-11-21 NMSA 1978. If a member’s total annual salary is [~~\$20,000~~] \$24,000 or less the member shall be subject to the lower contribution rate set forth in Subsection B of Section 22-11-21 NMSA 1978. When a member whose salary is [~~\$20,000~~] \$24,000 or less earns in excess of the [~~\$20,000~~] \$24,000 limit during the fiscal year,

the member shall be subject to the higher contribution rate in Subsection A of Section 22-11-21 NMSA 1978 effective the first day of the month in which the member earns in excess of the [~~\$20,000~~] \$24,000 limit. However, if a member whose salary is [~~\$20,000~~] \$24,000 or less changes positions with a local administrative unit during the fiscal year or engages in additional employment with the same or other local administrative unit during the fiscal year, and that change in employment creates the expectation that the member's total annual salary shall be more than [~~\$20,000~~] \$24,000, then the member's contribution rate shall be adjusted in accordance with the change in employment beginning the first day of the month of the change in employment.

**(1)** Salary includes payments made directly to the member or to a third party on behalf of or for the benefit of the member. Salary includes, without limitation:

**(a)** base salary, compensation, or wages;

**(b)** salary, compensation or wages for additional services rendered; examples include: teaching courses in addition to or above a full teaching load during the September to May academic year; teaching courses or performing research during summer (e.g., June through August) where such courses or research are not included in the duties on which the member's salary is based; and, performing work in addition to that specified in the employee's job description; performing administrative duties, such as serving as a department head, head of a faculty or staff group, or for providing other additional services;

**(c)** salary, compensation or wages based on professional certifications or qualifications, or skills such as being bilingual or multilingual;

**(d)** overtime, shift differential, and 'on-call' or call back pay.

**(2)** Retirement contributions shall be made by a local

administrative unit and a member on base salary earnings before the salary is reduced due to the local administrative unit and member entering into a voluntary "cafeteria" plan.

**(3)** The salary or compensation paid to a member under a school bus owner-driver contract shall be covered for contributions and benefit calculation purposes. Contributions for compensation paid under a school bus owner-driver contract shall be based upon and limited to the compensation amount paid to a person who drives a single school bus owned by that person over a regularly established route under a regular contract in that person's name with a local administrative unit.

**(4)** Tips or other remuneration paid to a member by a third party are considered salary to the extent that a local administrative unit reports such amounts as the member's income for tax purposes.

**B.** The following items shall not be considered annual salary for the purposes of contributions to the fund and computation of the member's annual benefit:

**(1)** Bonuses, awards and prizes, pay supplements or salary supplements or other "one-time" payments which do not increase an employee's annual base pay or which are made in lieu of an increase in base pay, and similar additional payments, as well as allowances or reimbursements for travel, housing, food, equipment or similar items.

**(2)** Lump-sum payments to the member for accrued sick leave made at any time, and lump-sum payments of accrued annual leave (also referred to as "vacation leave") made after July 1, 2010. Lump-sum payments for accrued annual leave made on or before July 1, 2010 shall be includable as annual salary only to the extent that it does not include payment for more than 30 days of such leave.

**(3)** Payments made by a local administrative unit

to a member where services are not rendered. By way of example, and with limitation to such examples: (a) payments by an employer to "buy-out" the remaining term of a member's employment contract or in connection with an early retirement program are not payments for services rendered, irrespective of whether payment is made in a lump-sum or distributed over a period of time, and (b) payments as a result of a legal settlement, whether related to the member's employment or otherwise, are not payments for services rendered, unless such payments are specifically made for salary that was not previously paid.

**(4)** Stipends, salary, or other compensation paid to student teachers.

**(5)** Stipends or one-time payments for attending training sessions where such payments are not reimbursements for travel expenses.

**(6)** Allowances or reimbursements for, or expenses related to, travel, housing, food, equipment, cars, or similar items.

**(7)** After July 1, 2012, additional pay or a pay differential that is based solely on a member performing duties at (a) a location that is different than the location at which the member regularly performs his or her job duties or (b) that is based on the member performing duties outside of the United States and its insular areas, territories, and possessions (e.g., a location differential or hazard or hazardous duty pay).

[2.82.3.8 NMAC - Rp, 2.82.3.8 NMAC, 7/1/2012; A, 10/15/2012; A, 9/26/2017; A, 11/12/2019]

**2.82.3.10 REFUNDS OF CONTRIBUTIONS IN THE EVENT OF DEATH OF MEMBER OR BENEFICIARY:**

**A.** In the event of the death of an active member who is not vested, member contributions together with interest calculated at the refund rate shall be refunded to the member's

beneficiary or to the member's estate upon completion of the proper refund forms as provided for herein.

**B.** In the event of the death of a vested member who did not select Option B benefits prior to the effective date of retirement, the deceased member's beneficiary shall have the option of electing to receive a refund of the member's contributions or receiving benefits in the form of Option B as provided in Section 22-11-29 NMSA 1978. Refunds, together with interest calculated at the refund rate and reduced by the sum of any disability benefits which that member [might have] previously received, shall be paid to the member's surviving beneficiary, [or] surviving spouse or domestic partner if no beneficiary had been named, or if there is no named surviving beneficiary, surviving spouse or domestic partner, to the member's estate. If a beneficiary defers payment after the member dies as described in Section 22-11-29 NMSA 1978 and requests a lump sum payment in lieu of benefit under Option B, interest shall be calculated at the refund rate though the end of the calendar quarter prior to the date on which the complete refund request is received by the ERB. Under the provisions of Options B and C, if both the member and the designated beneficiary die before the total of the retirement benefits received by the member and the beneficiary equal the total contributions made by the member, the difference, less any disability benefits previously paid to the member, shall be paid to the member's or the beneficiary's estate.

**C.** In order to obtain a refund of contributions after the death of a member, the member's beneficiary must notify the director of the member's death and furnish a copy of the death certificate or other proof of death acceptable to the director, whereupon the director shall furnish the beneficiary the proper forms to request a refund.

**D.** If the amount of a deceased member's contribution does not exceed the sum of \$1,000.00

and no written claim is made to the board for it within one year from the date of the member's death, by the member's surviving beneficiary or estate, payment thereof may be made to the named beneficiary or, if none is named, to the person that the board determines to be entitled to the contribution under the laws of New Mexico.

**E.** A person will be considered a domestic partner if the person submits a completed ERB domestic partner affidavit form and two of the following documents: proof of shared residence via joint mortgage statement, joint rental agreement, or deed; automobile title or registration showing joint ownership of a vehicle; joint checking, bank, or investment account statement; joint credit account statement; a will or life insurance policy that designates the other person as primary beneficiary; or such other supporting document(s) approved by the director.

[2.82.3.10 NMAC - Rp, 2.82.3.10 NMAC, 7/1/2012; A, 10/15/2012; A, 11/12/2019]

**2.82.3.12 PURCHASE OF NON-REPORTED SERVICE; FAILURE TO DEDUCT MEMBER CONTRIBUTIONS:**

**A.** Non-reported service must be purchased at the time it is discovered. Payment for non-reported service shall be at the contribution rate in effect at the time the non-reported service is discovered. The full fiscal year salary for the position for which the member was hired shall determine whether a member pays the contribution rate applicable to members who earn [~~\$20,000~~] \$24,000 or less per year in accordance with Section 22-11-21 NMSA 1978.

**B.** If the local administrative unit fails to deduct the applicable contribution from the salary paid to a member for each payroll period, the local administrative unit shall be responsible to remit to the fund the total amount due for both the member and the local administrative unit plus

interest at a rate set by the board. [2.82.3.12 NMAC - N, 7/1/2012; A, 9/26/2017; A, 11/12/2019]

**EDUCATIONAL RETIREMENT BOARD**

**This is an amendment to 2.82.4 NMAC, Sections 8 and 10, effective 11/12/2019.**

**2.82.4.8 EARNED SERVICE CREDIT:**

**A.** Earned service credit shall be granted on a quarterly basis.

**B.** A member shall receive one quarter of credit for each calendar quarter in which the member has earnings from regular employment and renders services for a minimum of 16 days. A member is considered to have rendered services for each day upon which the member is paid salary, regardless of whether the member is on annual, sick, administrative or other form of paid leave. Four calendar quarters of credit shall constitute one year. The calendar quarters of a year shall begin and end as follows: July 1 through September 30; October 1 through December 31; January 1 through March 31; and April 1 through June 30.

**C.** Members who are granted paid sabbatical leave shall receive one calendar quarter of earned service credit for each quarter in which they receive pay for such.

**D.** If a member is granted earned service credit while on paid sabbatical leave and that sabbatical leave is subsequently revoked, with salary payments returned to, or demanded by the administrative unit, under the terms of the leave agreement between the administrative unit and the member, the earned service credit granted during such sabbatical leave shall be revoked.

**E.** In the event of revocation of earned service credit as provided in Subsection D of 2.82.4.8 NMAC, disposition of contributions made by the member and local

administrative unit relating to the revoked period of earned service credit shall be as follows:

(1) Local administrative unit contributions shall be credited to the local administrative unit to be used against future contribution costs.

(2) Before the member contribution shall be disbursed, or credited, the local administrative unit shall furnish the board with proof of the settlement which has been made with the member. Following the receipt of this proof, the member contributions shall be handled as follows:

(a) If the local administrative unit has completed the financial settlement with the member without being reimbursed for member contributions relating to the leave and paid to the board, the administrative unit shall be granted credit for such member contributions to be used against the future administrative unit contribution costs.

(b) If the local administrative unit has been reimbursed by the member for member contributions relating to the leave and paid to the board, such member contributions shall be paid to the member on a refund voucher separate from any other refund which might be requested by the member.

F. An exchange teacher who is working outside the New Mexico public schools, but who is being paid a regular salary by a local administrative unit, shall receive earned service credit for such service.

G. The board shall not allow contributory service credit when token salaries are paid or when gratuitous service is performed. The ERB shall rule on each case involving gratuitous service or token salaries when each case is presented.

H. The board may accept rollover and employer payroll deduction contributions for the restoration of withdrawn earned service credit if the following conditions are met:

(1) The payments must be all or a portion

of the member's interest qualified under Section 401(a) of the Internal Revenue Code.

(2) The payments shall contain only tax-deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases or indemnification to the board against any and all liabilities that may be connected with the transfer, verifying that the proposed transfer is a qualifying contribution under the Internal Revenue Code.

(3) Payroll deductions and employer pickups are authorized by the governing body of the ERA employer.

(4) The board may not accept rollover or employer pickup payroll deduction contributions in excess of the amount required to restore the withdrawn earned service credit.

I. For payments to restore earned service credit which commence on and after January 1, 2002, the board may accept rollover and transfers if the following conditions are met:

(1) Rollovers must be eligible rollover distributions that are not includible in the income of the member by reason of Sections 402(c), 403(b)(8), 408(d) or 457(e) (16) of the Internal Revenue Code.

(2) Transfers must be direct trustee-to-trustee transfers from a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code, an annuity contract described in Section 403(b) of the Internal Revenue Code to the extent permitted by Section 403(b)(13) of the Internal Revenue Code, or an eligible plan under Section 457(b) of the Internal Revenue Code to the extent permitted by Section 457(e)(13) of the Internal Revenue Code.

(3) The rollovers and transfers shall contain only pre-tax deferred contributions and earnings on the contributions. The member and employer must submit satisfactory documentation, releases, or indemnification to the

board against any and all liabilities that may be connected with the rollover or transfer verifying that the proposed rollover or transfer is permissible under the Internal Revenue Code.

(4) Payroll deduction contributions shall no longer be allowed for the purchase of earned service credit if the contributions would commence on or after July 1, 2002.

(5) The board may not accept rollovers or transfers in excess of the amount required to restore the withdrawn earned service credit.

J. A person who is employed by a local administrative unit and receives retirement benefits pursuant to the Public Employees Retirement Act shall not earn service credit unless the person has suspended their benefit.

[2.82.4.8 NMAC - Rp, 2.82.4.8 NMAC, 10/31/2017, A, 11/12/2019]

**2.82.4.10 RETURN TO**

**WORK:** No service credit can be earned, purchased or otherwise credited for any of the time a retired member is employed by a local administrative unit [~~while the member is participating in the return to work program of the Act or the return to work exception~~] unless the retired member has suspended their retirement benefit. While a retired member is [~~participating in the return to work program or the return to work exception~~] employed by a local administrative unit, no service credit can be purchased for service previously earned or withdrawn unless the retired member has suspended their retirement benefit.

[2.82.4.10 NMAC - Rp, 2.82.4.10 NMAC, 10/31/2017; A, 11/12/2019]

## EDUCATIONAL RETIREMENT BOARD

**This is an amendment to 2.82.5 NMAC, Sections 10, 11, 13, 15 and 16, effective 11/12/2019.**

### 2.82.5.10 COMPUTATION AND COMMENCEMENT OF RETIREMENT BENEFITS:

**A.** Upon retirement, the following procedures shall apply with regard to commencement of the member's benefit:

(1) If the retiring member's employment terminated at least 90 days prior to the effective date of retirement, the benefit may be commenced at the end of the month following the effective date of retirement.

(2) If the retiring member's employment terminated within 90 days prior to the effective date of retirement, the retiring member's benefit may be estimated by the director and commenced at the end of the month following the effective date of retirement.

(3) After the employer report is received from the administrative unit, reporting the retiring member's final earnings, the director shall determine whether or not the estimated benefit is correct. If the estimated benefit is incorrect, the director shall make the appropriate adjustment to the member's benefit, retroactive to the effective date of the benefit. This adjustment, if required, shall be made at the earliest practical date. The retiring member shall be advised regarding the nature of any such adjustment. An adjustment will be made in this manner if and only if the adjustment based upon the member's actual earnings would result in a monthly benefit which differs more than one dollar from the estimated benefit.

**B.** Whenever a retiring member completes the academic or fiscal year prior to July 1, he shall not be entitled to retirement benefits for the months of July or August if he returns to employment at the

beginning of the next following academic or fiscal year. If a member shall have received benefits for such months, he shall be required by the director to return the sums received, to the educational retirement fund, in accordance with Section 22-11-40 NMSA 1978.

**C.** The retiring member shall be furnished with copies of all computations including a listing of his service credit, and he shall have 90 days after receipt of same in which to file notice of correction with the director, after which time the computations and service may not be corrected by the member.

**D.** A member's average annual salary as defined in Section 22-11-30 NMSA 1978 shall be the average annual earnings of the member in the last 20 calendar quarters in which there were earnings preceding retirement or the average annual earnings of any 20 consecutive calendar quarters in which there were earnings, whichever is greater. Salary earned by a retiree who has returned to employment under the return to work program described in 2.82.5.15 NMAC or the return to work .25 FTE or less provision described in 2.82.5.16 NMAC shall not be used in determining a member's average annual salary.

**E.** When determining a member's last five-year average annual salary (last 20 calendar quarters), the director shall use the reported earnings on which contributions have been made by the member during the 20 quarters of employment immediately preceding the member's date of termination, except that if a member's last employment terminated at least one month prior to the close of the calendar quarter (or one month prior to the close of the academic year if such ends in May), [his] the member's last five years' earnings shall be the reported earnings upon which contributions have been made by the member during the five years of employment preceding the end of the month in which termination occurs. In such cases, any earnings in

a calendar quarter shall be considered as earnings for the full quarter, except for the first quarter and the last quarter of the last five years of employment.

**F.** When the member's application for benefits has been approved and his effective date of retirement has been reached, the member shall then be retired.

**G.** Benefits shall not be commenced until the retiring member has elected the retirement benefit as provided in Section 22-11-30 NMSA 1978, or an optional benefit pursuant to Section 22-11-29 NMSA 1978.

**H.** Re-retirement benefits shall be computed in the following manner:

(1) The re-retirement benefit will be calculated in the same way as [his] the member's last benefit and will be based on the last five-year average or the highest consecutive five-year average, whichever is greater, for which contributions were made, and [his] the member's total service at re-retirement. The retirement benefit formula will be the same as at last retirement unless the member returns to employment for at least four quarters after the effective date of change in the formula. If this occurs, the benefit computation will be based on the benefit formula in effect at the time of re-retirement.

(2) The re-retirement benefit calculated above is reduced under the following conditions:

(a) At re-retirement the member's retirement age shall be [his] the member's chronological age less any period of time(s) during which benefits were received while in retirement. If this age is under 60 and [his] the member's total service is under 25 years, [his] the benefit is reduced by six-tenths percent for each quarter year under 60, down to age 55, plus one and eight-tenths percent for each quarter year this age is under 55.

(b) If the last benefit was payable as a reduced benefit under the terms of an option, the same terms and reduction shall apply to the re-retirement

benefit.

(c)

In no case can [his] the member's re-retirement benefit be less than [he] the member was receiving when [he] the member returned to employment. [6/30/1999; 2.82.5.10 NMAC - Rn, 2 NMAC 82.5.10, 11/30/2001; A, 10/31/2002; A, 10/17/2017; A, 11/12/2019]

**2.82.5.11 EFFECTIVE DATE OF BENEFIT:**

**A.** Whenever a retiring member completes the academic year for which he has been contracted or employed, his effective date of retirement shall be July 1, provided that application is made as stipulated in Subsection B of 2.82.5.11 NMAC. Whenever a retiring member terminates at a time other than at the end of the academic year for which [he] the retiring member has been contracted or employed, the effective date may be the first day of the month following termination, provided that application must be as stipulated in Subsection B of 2.82.5.11 NMAC.

**B.** The effective date of benefits cannot in any case be earlier than the first day of the month following receipt of the completed application forms (as provided by the director) from the member or [his] the member's employer, except as provided in Subsection D of 2.82.5.11 NMAC.

**C.** Section 22-11-28 NMSA 1978 shall be construed to mean that the effective date of benefits shall be in accordance with Section D of this Rule, and further that on concurrence of the local administrative unit for retirement on a date other than July 1 has been given when the local administrative unit certifies the member's termination on the application form.

**D.** If a member's application for benefits is received after the effective date desired by the member, and such desired effective date would otherwise be in accordance with the law and rules of the board, the director may commence the member's benefit as of such date, only if the delay in filing was due

to delay in processing by the local administrative unit, and not due to any fault or wish of the member.

The director shall also consider an application to have been duly filed in this office on the date postmarked if the application is mailed.

[6/30/1999; 2.82.5.11 NMAC - Rn, 2 NMAC 82.5.11, 11/30/2001; A, 10/17/2017; A, 11/12/2019]

**2.82.5.13 OPTIONS:**

**A.** Option B provided in accordance with Subsection D of Section 22-11-29 NMSA 1978 shall be operative:

(1) during periods of non-participation, if contributions are not withdrawn, and

(2) during periods of time when a member is receiving disability benefits, and

(3) during the period of time from a member's effective retirement date until the final election of option is received in the ERB office.

**B.** If a member with option B coverage should terminate employment and withdraw his contributions, thereby causing the option B to become inoperative, the member may restore the amount withdrawn, together with required interest, and cause the option to become operative again.

**C.** An option election on file with the director by a member who has not retired shall become void on July 1, 1984 at which time the member will automatically be afforded the coverage of option B.

**D.** Upon retirement, a member may elect an optional benefit in accordance with Section 22-11-29 NMSA 1978. If electing coverage under option B, the member may not designate a beneficiary more than 10 years younger than the member unless the beneficiary is the member's spouse. In order that the retiring member may have the opportunity to properly consider this decision and to allow sufficient time for the member and the board to carry out necessary administrative procedures relating to the election of an option, an option election filed with the

director subsequent to the effective date of retirement, but prior to commencement of benefit payments, shall be deemed to have been filed in accordance with the provisions of Section 22-11-29 NMSA 1978.

**E.** Whenever a member with option B coverage dies prior to the member's effective retirement date, it shall be incumbent upon the member's beneficiary to furnish proof of death to the director. The director shall then advise the beneficiary of the amount payable as a lump-sum settlement. Additionally, the director shall advise the beneficiary of the monthly amount of benefit payable as of the first of the month following the death of the member, as well as the approximate monthly amount payable, if the beneficiary defers receipt of the benefit to the date on which the member would have been age 60, had the member lived. The beneficiary shall then advise the director, in writing, whether he wishes to receive a lump-sum payment, commence the benefit at the earliest possible date, or defer the benefit to a date not later than the date on which the member would have attained age 60, had the member lived. If the beneficiary chooses a monthly benefit, he shall not be required to make formal application for such benefit as required of members seeking retirement status. If the beneficiary chooses to defer the benefit to a later date, he must advise the director at least 30 days in advance of the date on which he wishes benefit to start.

**F.** Upon the death of a member who has the automatic option B coverage, and who has failed to name or who has incorrectly named a beneficiary under the option, the following shall apply:

(1) If the member has named one person on the ERB beneficiary designation form or form 42, that person shall be declared the beneficiary under option B.

(2) If more than one person is named on the ERB beneficiary designation form or form 42 of which one is the spouse of the member, the spouse shall be declared

the beneficiary for option B purposes.

(3) If the beneficiary named on the ERB beneficiary designation form or form 42 is deceased, a lump-sum payment of contributions plus applicable interest will be paid to the estate of the member.

(4) If the beneficiary named on the ERB beneficiary designation form or form 42 is a minor child, the legal guardian, if other than the parent, will designate the manner in which the alternative payments under option B will be paid to the minor.

(5) If the beneficiary named on the ERB beneficiary designation form or form 42 is a minor child in the care and custody of a parent, the parent shall designate the method of payment to the minor child under the option B.

(6) If more than one person is named on the ERB beneficiary designation form or form 42, none of which is the spouse of the member, a lump-sum payment of contributions plus appropriate interest shall be made to the beneficiaries as per the directions of the member on the ERB beneficiary designation form or form 42. In the absence of contrary directions by the member, equal shares will be made. If one or more of the beneficiaries are minors, the distribution to the minor(s) shall be made to:

(a) a trust fund for the minor(s), if established, or

(b) on behalf of the minor(s), a person who has care and custody of the minor, or

(c) directly to the beneficiary(ies) upon attainment of age 18.

(d) these methods of distribution of payments shall also apply to Paragraphs 4 and 5 above.

(7) If [~~a person(s) is not~~] the beneficiary named on the ERB beneficiary designation form or form 42 is not a human being, the beneficiary shall not be eligible for Option B coverage and shall receive a lump-sum payment

of the member's contributions plus applicable interest [~~will be made as the member has directed on the form 42~~] at the rate set by the board. [6/30/1999; 2.82.5.13 NMAC - Rn, 2 NMAC 82.5.13, 11/30/2001; A, 6/30/2016; A, 11/12/2019]

#### **2.82.5.15 RETURN TO WORK PROGRAM:**

A. In order to qualify to return to employment (hereinafter "return to work") as provided for in Subsections A and [E] F of Section 22-11-25.1 NMSA 1978, a retired member must have a period of at least 12 consecutive months in which they have not been employed as an employee or independent contractor by a local administrative unit (hereinafter, a "break in service").

(1) To satisfy the requirements of a "break in service," the retired member must not have rendered service of any nature whatsoever to a local administrative unit for the 12 consecutive month period. "Service" shall be defined to include, without limitation, all employment whether full time, part-time including service allowed under Subsection B of 2.82.2.11 NMAC, substitute teaching, performing duties as a volunteer, which would otherwise be, or in the past have been, performed for the local administrative unit by a paid employee or independent contractor, or services rendered as an independent contractor, an employee of an independent contractor, or any other employment as described in Subsections A through D of 2.82.2.11 NMAC. A "local administrative unit" shall include any entity controlled by or subject to the control of a local administrative unit, including without limitation, a corporation or other entity regardless of legal form and of whether such corporation or entity is created for profit or non-profit purposes.

(2) The break in service must have commenced after the effective date of retirement and been completed prior to the first day of re-employment, but need not have been the twelve consecutive months immediately prior to the first

day of such re-employment (i.e. the break in service could have occurred at any time during the period after the effective date of retirement and before the first day of re-employment but must have been at least 12 consecutive months within that period).

B. [~~In addition to a break in service of at least 12 consecutive months, in order to~~] To satisfy the provisions of Subsection [E] F of Section 22-11-25.1 NMSA 1978, a member who retired on or before January 1, 2001, and who subsequently removed him or herself from retirement (also referred to as "suspending retirement") pursuant to Section 22-11-25 NMSA 1978, and thereafter re-retired, must [complete an additional period of at least 90 days after the re-retirement, during which the retired member has not been employed as an employee or an independent contractor by a local administrative unit. During the 90-day period, the retired member must satisfy the same requirements regarding employment by a local administrative unit as must be satisfied for a 12 consecutive month break in service. The 90-day period shall not include any portion of the period used to satisfy the 12 consecutive month break in service. In addition, the 90-day] not have rendered service to a local administrative unit for at least 12 consecutive months from the date of the initial retirement. The 12 consecutive month period shall not include any scheduled breaks, vacations, paid administrative or sick leave, or holidays consisting of more than two business days.

C. Any and all time that a retired member has provided service to a local administrative unit under the return to work program cannot be used in the calculation of retirement benefits and a retired member is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's re-employment with a local administrative unit under the return to

work program.

**D.** ~~[No]~~ A retired member is not eligible for the return to work program until the member submits a completed, signed and notarized return to work ~~[form]~~ application as supplied by ERB, (the "return to work application"), verifying their eligibility for the return to work program and ERB has approved the retired member's return to work application.

**E.** The date of suspension of retirement for any retired member shall be the last day of the month in which the member suspended retirement.

**F.** Any retired member who is participating in the return to work program who has violated the provisions of the program, failed to submit the required return to work application, or is discovered to have been ineligible to participate in the program shall have their retirement immediately suspended and shall pay the educational retirement fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to work program plus interest at a rate to be set by the board. Before his or her monthly retirement benefits can resume, the suspended retired member must certify to ~~[the]~~ ERB that they have terminated any and all employment that would disqualify them from retirement under the Educational Retirement Act and must reapply for retirement. To re-qualify for the return to work program, the retired member must complete the minimum break in service as described in Subsection A of 2.82.5.15 NMAC, calculated from the date of reinstatement of retirement.

**G.** A retired member is qualified under Subsection B of Section 22-11-25.1 NMSA 1978 to return to full time employment without being required to suspend retirement benefits if the member:

(1) retired on or before January 1, 2001; and

(2) did not work more than .25 FTE at any time after January 1, 2001 or provide any other service to a local administrative

unit after that date that would have required the member to suspend retirement benefits under the act; and

(3) did not suspend retirement after January 1, 2001; and

(4) completed and received approval of a return to work application with ERB.

**H.** ~~[Member's-qualifying]~~ A member who qualifies under Subsection B of Section 22-11-25.1 NMSA 1978 may begin full time employment immediately after ERB approval without any additional waiting period.

[2.82.5.15 NMAC - N, 11/30/2001; A, 12/14/2001; A, 10/31/2002; A, 7/15/2003; A, 12/31/2008; A, 6/16/2015; A, 10/17/2017 A, 11/12/2019]

**2.82.5.16 RETURN TO WORK ~~[EXCEPTION]~~ .25 FTE OR LESS:**

~~[A.]~~ A retired member may return to employment (includes "substitution") and earn up to \$15,000 per fiscal year or the amount possible under the .25 or less FTE provision, whichever is greater, without affecting the retired member's retirement benefit. For purposes of this provision, earnings shall include bonuses, annual and sick leave payouts, and any other form of cash remuneration for services rendered except for reimbursements and allowances for expenses.

~~[B.]~~ In the event that a retired member enters into an agreement which provides for earnings in excess of the above limits or the retired member actually has earnings in excess of the above limits, the retired member's retirement benefit will be suspended for the duration of the employment, and the retired member will be returned to an active status effective the first day of the month following the month in which the retired member has earnings in excess of the above limits. The retired member shall pay the educational retirement fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to

~~work exception plus interest at a rate to be set by the board.~~

~~[C.]~~ A retiree who is participating under the return to work program may elect to switch to the return to work exception. Such election shall be effective the first day of the quarter following the date of the election.]

**A.** A retired member may return to employment (includes "substitution") at a level of .25 FTE or less without affecting the retired member's retirement benefit provided the retired member submits a return to work application and is approved by ERB prior to commencing employment.

**B.** In the event that a retired member enters into an agreement which provides for employment at a level greater than .25 FTE or actually works greater than .25 FTE and has not met the requirement in Subsections A and F of Section 22-11-25.1 NMSA 1978, the retired member's retirement benefit will be suspended for the duration of the employment, and the retired member will be returned to an active status effective the first day of the month following the month in which the retired member's employment exceeded .25 FTE. The retired member shall pay the educational retirement fund a sum equal to all retirement payments the retired member received while ineligible plus interest at a rate to be set by the board.

[2.82.5.16 NMAC - N, 6/28/2013; 2.82.5.16 NMAC - N, 6/16/2015; A, 11/12/2019]



**PUBLIC EDUCATION DEPARTMENT**

The New Mexico Public Education Department approved at its 10/25/2019 hearing, to repeal its rule 6.12.7 NMAC, Bullying Prevention (filed 11/30/2006) and replace it with 6.12.7 NMAC, Safe Schools for All Students (adopted on 10/31/2019), and effective 11/12/2019.

**PUBLIC EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION  
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY  
PART 7 SAFE SCHOOLS FOR ALL STUDENTS**

**6.12.7.1 ISSUING AGENCY:** Public Education Department, hereinafter the department.  
[6.12.7.1 NMAC - Rp, 6.12.7.1 NMAC, 11/12/2019]

**6.12.7.2 SCOPE:** This rule applies to school districts, local school boards, state-chartered charter schools and governing bodies.  
[6.12.7.2 NMAC - Rp, 6.12.7.2 NMAC, 11/12/2019]

**6.12.7.3 STATUTORY AUTHORITY:** This rule is promulgated by the secretary of the department and the department under the authority of Sections 9-24-8, 22-2-1, 22-2-2, and 22-35-1 through 22-35-5 NMSA 1978.  
[6.12.7.3 NMAC - Rp, 6.12.7.3 NMAC, 11/12/2019]

**6.12.7.4 DURATION:** Permanent  
[6.12.7.4 NMAC - Rp, 6.12.7.4 NMAC, 11/12/2019]

**6.12.7.5 EFFECTIVE DATE:** November 12, 2019, unless a later date is cited at the end of a

section.  
[6.12.7.5 NMAC - Rp, 6.12.7.5 NMAC, 11/12/2019]

**6.12.7.6 OBJECTIVE:** To establish requirements for local school boards and public schools, including charter schools and governing bodies, to develop and implement bullying prevention policies and programs and to report on the implementation of the Safe Schools for All Students Act per the parameters established within the provisions of this rule.  
[6.12.7.6 NMAC - Rp, 6.12.7.6 NMAC, 11/12/2019]

**6.12.7.7 DEFINITIONS:**  
**A. "Bullying"** means any severe, pervasive, or persistent act or conduct that targets a student, whether physically, electronically, or verbally, and that:

- (1) may be based on a student's actual or perceived race, religion, color, national origin, ancestry, sex, sexual orientation, gender identify, spousal affiliation, physical or cognitive disability, or any other distinguishing characteristic; or an association with a person, or group with any person, with one or more of the actual or perceived distinguishing characteristics; and
- (2) can be reasonably predicted to:

- (a) place a student in reasonable fear of physical harm to the student's person or property;
- (b) cause a substantial detrimental effect on a student's physical or mental health;
- (c) substantially interfere with a student's academic performance, attendance, or participation in extracurricular activities; or
- (d) substantially interfere with a student's ability to participate in or benefit from the services, activities, or privileges provided by a school or school-affiliated entity.

**B. "Cyberbullying"** means any bullying that takes place

through electronic communication.

**C. "Electronic communication"** means a communication transmitted by means of an electronic device, including a telephone, cellular phone, computer, electronic tablet, pager or video or audio recording device.

**D. "Gender identity"** means a student's self-perception, or perception by another, of the student's identity as a male or female based upon the student's appearance, behavior, or physical characteristics that are in accord with, or opposed to, the student's physical anatomy, chromosomal sex, or sex at birth.

**E. "Harassment"** means a pattern of conduct that is intended to annoy, seriously alarm, or terrorize another person or group of people.

**F. "Physical or cognitive disability"** means a physical or cognitive impairment that substantially limits one or more of a student's major life activities.

**G. "Progressive discipline"** means disciplinary action other than suspension or expulsion from school that is designed to correct and address the basic causes of a student's specific misbehavior while retaining the student in class or in school, or restorative school practices to repair the harm done to relationships and other students from the student's misbehavior, and may include:

- (1) meeting with the student and the student's parents;
- (2) reflective activities, such as requiring the student to write an essay about the student's misbehavior;
- (3) counseling;
- (4) anger management;
- (5) health counseling or intervention;
- (6) mental health counseling or intervention;
- (7) participation in skill-building and conflict resolution activities;
- (8) community

service; and  
 (9) in-school detention or in-school suspension that is for a constructive purpose and may take place during lunchtime, recess, after school, or during weekends.

**H. “Regular volunteers”** means those persons, including relatives of students, who commit to serve on a regular basis at a school district, charter school, or other educational entity without compensation.

**I. “Sexual orientation”** means heterosexuality, homosexuality, or bisexuality, whether actual or perceived.  
 [6.12.7.7 NMAC - Rp, 6.12.7.7 NMAC, 11/12/2019]

**6.12.7.8 BULLYING PREVENTION POLICIES - ADOPTION AND ENFORCEMENT:**

**A.** By January 1, 2020, each local school board or governing body shall adopt and enforce policies to:

- (1) prevent bullying and cyberbullying:
  - (a) on its property, including electronic communication on or with the use of its property;
  - (b) at school or district-sponsored events; and
  - (c) on any school-sponsored transportation; and
- (2) prohibit electronic communication directed at a student that is published with the intent that it be seen by or disclosed to that student and that substantially interferes with the student’s ability to participate in or benefit from the services, activities, or privileges provided by the public school.

**B.** Each local school board and governing body shall control the content of its policy, provided that the policy includes:

- (1) the definitions as set forth in this rule;
- (2) a statement

prohibiting bullying;  
 (3) a statement prohibiting retaliation against persons who report or witness incidents of bullying;

(4) a list of consequences, exclusive of suspension and expulsion, that can result from an incident of bullying, and with consequences that are designed to:

- (a) appropriately correct the bullying behavior;
- (b) prevent another occurrence of bullying or retaliation;
- (c) protect the target of the bullying;
- (d) be flexible so that, in application, the consequences can vary in method and severity based on:

- (i) the nature of the incident;
- (ii) the developmental age and/or cognitive level of the student who is bullying; and
- (iii) historical problem behavior from the student who is bullying; and
- (e) limit the restrictive nature of consequences for cyberbullying incidents, such that while correcting cyberbullying behavior and preventing further incidents of cyberbullying, a student with cyberbullying behavior is able to participate in or benefit from the services, activities, or privileges provided by the school to the greatest extent possible;

(5) a procedure for reporting bullying and for reporting retaliation for reporting an act of bullying, including:

- (a) an allowance for reporting orally and in the preferred language of the person reporting;
- (b) a method for anonymous reporting; provided that no formal disciplinary measures shall be taken solely on the basis of an anonymous report of an

actual bullying incident; and  
 (c) a method for parents to file written reports of suspected bullying; and  
 (6) a procedure for prompt investigation of reports of violations of the bullying prevention policy and of complaints of bullying or retaliation, including:

- (a) designation of a school or district administrator who has the responsibility to:
  - (i) investigate or supervise the investigation of all reports of bullying and
  - (ii) to ensure that investigations are completed promptly after the receipt of any report made under this rule;
- (b) a procedure for notification of the parents of the student alleged to have committed an act of bullying and the parents of the student targeted by the alleged act; provided that if, in the administrator’s professional opinion, notifying the parents would endanger the health or well-being of a student, the administrator may delay such notification as appropriate;

- (c) a requirement that school employees who witness bullying or who receive reports of bullying notify the designated administrator within two calendar days of the employee witnessing or receiving a report of bullying;
- (d) an appeal process for a student who is accused of bullying or who is the target of bullying and who is unsatisfied with the outcome of the initial investigation; and
- (e) development of a student safety support plan for students who are targets of bullying that addresses safety measures the school will take to protect targeted students against further acts of bullying.

**C.** Each local school board and governing body shall include bullying prevention policies and procedures for reporting bullying in student handbooks using

developmentally and culturally appropriate language. Policies shall be produced and disseminated in appropriate languages in any school district in which a substantial portion of the student population speaks a language other than English at home.

**D.** Each public school shall document reports and investigations of bullying and shall maintain those records for no less than four years.

**E.** Each local school board or governing body shall establish procedures for public schools to report the number of bullying incidents and the number of harassment incidents, as defined by federal or state law, along with responses to these incidents, and shall report this information annually to the department at such time as determined by the department and through the department’s student teacher accountability reporting or through other means as determined by the department.

[6.12.7.8 NMAC - Rp, 6.12.7.8 NMAC, 11/12/2019]

**6.12.7.9 BULLYING PREVENTION PROGRAMS - ESTABLISHMENT:**

**A.** Following adoption of a bullying prevention policy, each public school shall:

- (1) establish an annual bullying prevention program for students aligned with New Mexico’s health education content standards with benchmarks and performance standards;
- (2) provide annual training beginning with the 2020-2021 school year and each school year thereafter on bullying prevention to all school personnel and regular volunteers who have significant contact with students; and
- (3) incorporate information on the bullying prevention policy into new employee training.

**B.** Each school district and public school shall develop a plan for the way in which the policy is to

be publicized, including:

(1) making each school district’s bullying prevention policy, and developmentally, culturally and linguistically appropriate variants of the policy, available on district and/or school public websites;

(2) identifying a point of contact for bullying-related concerns; and

(3) informing parents and students about the policy at least annually through student handbooks and other resources.

[6.12.7.9 NMAC - N, 11/12/2019]

**6.12.7.10 REPORTING REQUIREMENTS:**

**A.** Beginning with the 2020-2021 school year, each school district and state-chartered charter school shall annually submit the following to the department in a method prescribed by the department and in a timeframe determined by the department:

(1) a status report on the implementation of the provisions of this rule;

(2) data elements on the implementation of this rule including:

(a) the aggregate number of bullying incidents of students within the district or state-chartered charter school;

(b) the aggregate number of harassment incidents of students within the district or state-chartered charter school; and

(c) the corresponding responsive action or disposition taken by the district or state- chartered charter school, by type of action, for each bullying incident of a student and for each harassment incident of a student.

**B.** Each school district and state-chartered charter school shall include, in its reporting, when known, a tabulation of the number of bullying incidents of students and the number of harassment incidents of students associated with each of the following actual or perceived

distinguishing characteristic:

- (1) race;
- (2) color;
- (3) national

- origin;
- (4) ancestry;
- (5) sex;
- (6) sexual

- orientation;
- (7) gender

- identity;
- (8) spousal

- affiliation;
- (9) physical or cognitive disability; or

- (10) an association with a person, or group with any person, with one or more of the actual or perceived distinguishing characteristics.

[6.12.7.10 NMAC - N, 11/12/2019]

**HISTORY OF 6.12.7 NMAC:**

**[RESERVED]**

6.12.7 NMAC, Bullying Prevention, filed 11/30/2006, was repealed and replaced by 6.12.7 NMAC, Safe Schools for All Students, effective 11/12/2019.

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**End of Adopted Rules**

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**Other Material Related to Administrative Law**


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**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**
**NOTICE OF PUBLIC COMMENT**

The United States Department of Health and Human Services requires the New Mexico Human Services Department meet certain Temporary Assistance for Needy Families (TANF) work participation requirements. To assist in meeting these requirements, federal regulations (45 CFR 261.40) allow New Mexico to decrease its work participation rate percentage by the number of percentage points that the FY 2019 caseload fell in comparison to the FY 2005 caseload. This is termed the TANF Caseload Reduction Credit. The total Federal expenditures and Maintenance of Effort (MOE) expenditures that are included in this report are subject to change due to fluctuations during year end budget close out and increases in MOE funding.

The estimated changes and corresponding methodologies are reported in the proposed TANF Caseload Reduction Credit Report which is available on the Human Services Department website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>. If you do not have Internet access, a copy of the proposed report may be requested by contacting the Income Support Division's Work and Family Support Bureau (WFSB) at (505) 827-7227. If you are a person with a disability and you require this information in an alternative format, please contact the American Disabilities Act Coordinator, at (505) 827-7701 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats.

The proposed comment period will begin at 8:00 a.m. on November 12, 2019 and end at 4:00 p.m. on December 12, 2019. Individuals wishing to comment on the TANF Caseload Reduction Credit Report should contact the Human Services Department, Income Support Division, Work and Family Support Bureau, P.O. Box 2348, Santa Fe, New Mexico, 87504-2348, or by calling (505) 827-7227.

Interested persons may address written or recorded comments to:

Human Services Department  
Income Support Division  
Work and Family Support Bureau  
P.O. Box 2348  
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to: [HSD-isdrules@state.nm.us](mailto:HSD-isdrules@state.nm.us).

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**REGULATION AND  
LICENSING DEPARTMENT  
FUNERAL SERVICES BOARD**
**NOTICE OF MINOR,  
NONSUBSTANTIVE  
CORRECTION**

The New Mexico Funeral Services Board gives Notice of a Minor, Nonsubstantive Correction.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

16.64.6.8 NMAC the numeral "2" was corrected to read "two".

A copy of this Notification will be filed with the official version of each of the above rules.

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**SECRETARY OF STATE**
**NOTICE OF MINOR,  
NONSUBSTANTIVE  
CORRECTION**

The New Mexico Secretary of State Office gives Notice of a Minor, Nonsubstantive Correction.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

There were no changes or amendment to Section 9.

Subsection D of 1.10.13.31 NMAC the erroneous referral to "...that paragraph" was changed to "...that subsection".

Paragraph (3) of Subsection G of 1.10.13.31 NMAC the numeral "4" was corrected to read "four".

A copy of this Notification will be filed with the official version of each of the above rules.

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**WORKFORCE  
SOLUTIONS,  
DEPARTMENT OF**
**NOTICE OF MINOR,  
NONSUBSTANTIVE  
CORRECTION**

The New Mexico Workforce Solutions Department gives Notice of a Minor, Nonsubstantive Correction.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made

to all electronic copies of the above rule:

Subsection A of 11.3.100.106 NMAC the citation to "...NMSA 1978, Section 14-2-1(8)" was corrected to "...paragraph (8) of Subsection A of Section 14-2-1 NMSA 1978".

Subsection A of 11.3.400.404 NMAC, the word "page" after "... [department's web]..." should have also been deleted and has been corrected to reflect the same.

The subsections for 11.3.400 NMAC have been re-numbered to eliminate the two references to subsection "B".

A copy of this Notification will be filed with the official version of each of the above rules.

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**End of Other Material  
Related to Administrative  
Law**

# 2019 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXX, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 15
Issue 2	January 17	January 29
Issue 3	January 31	February 12
Issue 4	February 14	February 26
Issue 5	February 28	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 14
Issue 10	May 16	May 28
Issue 11	May 30	June 11
Issue 12	June 13	June 25
Issue 13	July 5	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
Issue 16	August 15	August 27
Issue 17	August 29	September 10
Issue 18	September 12	September 24
Issue 19	September 26	October 15
Issue 20	October 17	October 29
Issue 21	October 31	November 12
Issue 22	November 14	November 26
Issue 23	December 5	December 17
Issue 24	December 19	December 31

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The New Mexico Register is available free online at: <http://www.nmcpr.state.nm.us>. For further information, call 505-476-7941.

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# 2020 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXI, Issues 1-24

Issue	Submittal Deadline	Publication Date
<b>Issue 1</b>	<b>January 6</b>	<b>January 14</b>
<b>Issue 2</b>	<b>January 16</b>	<b>January 28</b>
<b>Issue 3</b>	<b>January 30</b>	<b>February 12</b>
<b>Issue 4</b>	<b>February 13</b>	<b>February 25</b>
<b>Issue 5</b>	<b>February 27</b>	<b>March 10</b>
<b>Issue 6</b>	<b>March 12</b>	<b>March 24</b>
<b>Issue 7</b>	<b>March 26</b>	<b>April 7</b>
<b>Issue 8</b>	<b>April 9</b>	<b>April 21</b>
<b>Issue 9</b>	<b>April 23</b>	<b>May 5</b>
<b>Issue 10</b>	<b>May 7</b>	<b>May 19</b>
<b>Issue 11</b>	<b>May 28</b>	<b>June 9</b>
<b>Issue 12</b>	<b>June 11</b>	<b>June 23</b>
<b>Issue 13</b>	<b>July 6</b>	<b>July 14</b>
<b>Issue 14</b>	<b>July 16</b>	<b>July 28</b>
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