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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

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Notices of Rulemaking and Proposed Rules

ACCOUNTANCY, BOARD OF PUBLIC

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Public Accountancy Board (“Board”) will hold a rule hearing on Tuesday, August 25, 2020 at 9:00 a.m. Please note that this hearing is a rescheduled hearing from the postponed hearing on April 28, 2020 that was originally noticed with the NM State Records and Archives on February 25, 2020. Following the rule hearing, the Board will convene a board meeting to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held online and telephonically via Cisco Webex Meetings in Albuquerque, New Mexico. An NMPAB staff member will be present between 8:00a.m – 9:00a.m. on the day of the rule hearing at the Regulation and Licensing Department, 5500 San Antonio Dr. NE, Albuquerque, NM 87109, to accept public comment in written form. The NMPAB staff member will then present the public comment during the rules hearing.

To join the meeting online by Cisco Webex Meeting, please use the following link:

<https://nmrld.webex.com/nmrld/onstage/g.php?MTID=ea41e521c22b2b002494f8f1a72696893>

To join the meeting by phone 1-415-655-0002 United States Toll

Meeting number (access code): 146 966 1174

Suggestions for Successful Webex Meeting Attendance are available on the Board’s website.

http://www.rld.state.nm.us/boards/Accountancy_Members_and_Meetings.aspx

The purpose of the rule hearing is to consider proposed amendments to the

following rules:

16.60.1.7 NMAC – Definitions;
 16.60.1.9 NMAC – Board Operation;
 16.60.1.10 NMAC – Fees and Obligations;
 16.60.2.10 NMAC – Examination Administration;
 16.60.3.8 NMAC – Application Requirements;
 16.60.3.9 NMAC – Initial Certificate/ License Requirements
 16.60.3.12 NMAC – Reinstatement Requirements
 16.60.3.15 NMAC – Continuing Professional Education (CPE) Required to Obtain or Maintain an “Active” CPA License;
 16.60.4.8 NMAC – Firm Permit Application, Renewal, Reinstatement and Notification Requirements;
 16.60.5.11 NMAC – Rules of Conduct; and
 16.60.5.13 NMAC – Unauthorized Use of the CPA Title.

To obtain and review copies of the proposed changes you may go to the Board’s website at: <http://www.rld.state.nm.us/boards/Accountancy.aspx> or contact the New Mexico Public Accountancy Board at by email at Accountancy.Board@state.nm.us.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes to Jeanette Contreras, Board Executive Director, via electronic mail at Accountancy.Board@state.nm.us by regular mail at 5500 San Antonio Dr. NE, Albuquerque, NM 87109, no later than Monday, August 24, 2020. Persons will also be given the opportunity to drop off their comments prior to the rule hearing. An NMPAB staff member will be present between 8:00a.m – 9:00a.m. on the day of the rule hearing at the Regulation and Licensing Department, 5500 San Antonio Dr. NE, Albuquerque, NM 87109, to accept public comment in written form. The NMPAB staff will then present the public comment during the rules hearing.

All written comments will be posted to the Board’s website at: <http://www.rld.state.nm.us/boards/Accountancy.aspx>, no more than three business days following receipt to allow for public viewing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Jeanette Contreras, Board Executive Director by email at Jeanette.Contreras@state.nm.us.

Statutory Authority: The 1999 New Mexico Public Accountancy Act, Sections 61-28B-5, NMSA 1978, among other provisions, specifically authorizes the Board to “adopt and file rules necessary to carry out the provisions of the 1999 Public Accountancy Act.”

Summary of Proposed Changes:

In addition to making minor clarification changes, the proposed rules are summarized as follows:

16.60.1.7 NMAC - Definitions

The amendments to this section clarify and create new definitions that will create better understanding of the Act.

16.60.1.9 NMAC - Board Operation

The amendment to this section will create flexibility for unforeseen situations in regards to the amount of board meetings required a year.

16.60.1.10 NMAC – Fees and Obligations

The amendment to this section will remove the fee charged for a name change due to marriage, divorce, legal name change, etc.

16.60.2.10 NMAC - Examination Administration

The amendment to this section will increase the amount of times a candidate can retake the exam, which will be in accordance with proposed 2020 law change.

16.60.3.8 NMAC - Application Requirements

The amendments to this section will allow the board to accept electronic signatures.

16.60.3.9 NMAC - Initial Certificate/License Requirements

The amendment to this section will update the facility used for required background checks and will clarify what is considered a complete renewal application.

16.60.3.12 NMAC - Reinstatement Requirements

The amendment to this section will allow the board the opportunity to assess the professional competence of an applicant after five (5) years of not practicing Certified Public Accountancy.

16.60.3.15 NMAC - Continuing Professional Education (CPE) Required to Obtain or Maintain an "Active" CPA License

The amendments to this section will clarify what is considered a complete renewal application; specify what services an "inactive" license holder can perform; assess the competency of a licensee requesting "active" status after being in "inactive" status for five (5) or more years; comply with the Uniform Accountancy Act model rules and current nano-learning methods and to maintain reciprocity with states adapting new rules; clarify what is acceptable publications to earn continuing professional education; clarify what is considered technical continuing professional education; add to what is required on a continuing profession education completion certificate; and add records of completion as evidence of compliance with CPE requirements.

16.60.4.8 NMAC - Firm Permit Application, Renewal, Reinstatement and Notification Requirements

The amendment to this section will comply with the firm mobility law and allow the Board to accept electronic signatures.

16.60.5.11 NMAC - Rules of Conduct

The amendment to this section will allow the public the opportunity to ensure their Certified Public Accountant carries an active license or firm permit.

16.60.5.13 NMAC - Unauthorized Use of the CPA Title

The amendments to this section will clarify the "response" requirements for board communications and to comply with firm mobility law changes.

**ENERGY, MINERALS AND
NATURAL RESOURCES
DEPARTMENT
YOUTH CONSERVATION
CORPS COMMISSION**

**NOTICE OF PROPOSED
RULEMAKING**

The Youth Conservation Corps Commission (Commission) hereby gives notice that the Commission will conduct a public hearing on August 18, from 9AM to 10AM via a WebEx online meeting. The link is <https://nmemnrd.webex.com/nmemnrd/j.php?MTID=e259295441ebb10aa520651a32e2a3fbe>. The meeting requires registration. After you register, you will be sent the password and instructions on how to join. The purpose of the public hearing will be to obtain input on proposed rule amendments to 11.2.171 NMAC, The Youth Conservation Corps (YCC) and Outdoor Equity Grant (OEG) Programs. Oral and written comments will be accepted at the public hearing; and the hearing will be recorded.

The purpose of this proposed rule replacement is to incorporate changes to the New Mexico Youth Conservation Corps Act, 9-5-B-1 to 9-5-B-11 regarding the transfer of the outdoor equity grant program from the Youth Conservation Corps Commission and incorporate and clarify standards and requirements of the Youth Conservation Corps program.

Public comment period: The Commission is currently accepting comments through 5:00pm, August 17, 2020. Interested individuals may submit written comments to Sarah Wood, via email at sarah.wood@state.nm.us; fax (505) 988-7313; by postal mail to Youth Conservation Corps, 811 St. Michaels Drive, Santa Fe, New Mexico 87505; or by telephone at 505 470-3710. Individuals may also submit written or oral comments at one or both of the public hearings.

All comments will be posted to the Commission's website at <http://www.emnrd.state.nm.us/YCC/yccactrules.html> within three business days.

Statutory Authority: The Youth Conservation Corps Act, Sections 9-5B-1 to 9-5B-11 NMSA 1978 (1992, as amended through 2019), specifically authorizes the Commission to "adopt rules that are necessary for the proper administration of the New Mexico Youth Conservation Corps Act."

The proposed rule amendments are printed below. Copies of the proposed rule may also be accessed on the Commission's website (<http://www.emnrd.state.nm.us/YCC/yccactrules.html>) or obtained from Sarah Wood, sarah.wood@state.nm.us (505) 470-3710.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Sarah Wood at (505) 470-3710 as soon as possible. The Department requires at least ten (10) days' advance notice to provide requested special accommodations.

**TITLE 11 LABOR AND
WORKERS COMPENSATION
CHAPTER 2 JOB TRAINING
PART 171 THE YOUTH
CONSERVATION CORPS (YCC)
[AND OUTDOOR EQUITY
GRANT (OEG) PROGRAMS]
PROGRAM**

11.2.171.1 ISSUING
AGENCY: The New Mexico Youth Conservation Corps Commission.
 [11.2.171.1 NMAC – Rp, 11.2.171.1 NMAC, 12/17/2019]

11.2.171.2 SCOPE: General Public.
 [11.2.171.2 NMAC – Rp, 11.2.171.2 NMAC, 12/17/2019]

11.2.171.3 STATUTORY
AUTHORITY: Section 9-5B-1 et-seq. NMSA 1978.
 [11.2.171.3 NMAC – Rp, 11.2.171.3 NMAC, 12/17/2019]

11.2.171.4 DURATION: Permanent.
 [11.2.171.4 NMAC – Rp, 11.2.171.4 NMAC, 12/17/2019]

11.2.171.5 EFFECTIVE
DATE: ~~December 17, 2019~~
September 15, 2020, unless a later date is cited at the end of a section.
 [11.2.171.5 NMAC – Rp, 11.2.171.5 NMAC, 12/17/2019; A 9/15/2020]

11.2.171.6 OBJECTIVE:
 The objective of this rule is to establish procedures and standards for the administration of the Youth Conservation Corps (YCC) program ~~[and the Outdoor Equity grant (OEG) program].~~
 [11.2.171.6 NMAC – Rp, 11.2.171.6 NMAC, 12/17/2019; A, 9/15/2020]

11.2.171.7 DEFINITIONS:
A. “In-kind contribution” means a non-monetary donation of goods or services provided by the project sponsor for the purpose of carrying out a program.
~~**B. “Low-income youth”** for the purposes of the outdoor equity grant program means New Mexico residents up to the age of 18 who qualify for a state or federal assistance program, such as free or reduced lunch, Medicaid or other similar program;~~

~~**[C] B. “Native American”** means a person having origins in any of the original peoples of North and South America (including Central America) and who maintain tribal~~

affiliation or community attachment.
~~**[D] C. “Residential program”** means a program where corps members and their supervisors are housed on-site in a residential facility.~~

~~**[E] D. “Rural”** means an area not within a metropolitan statistical area as defined by the United States office of management and budget.~~

~~**[F] E. “Summer program”** means a program taking place between May and September.~~

~~**[G] E. “Seasonal program”** means a program that takes place any time of year and is six months or less in duration.~~

~~**[H] G. “Under-resourced”** means lacking sufficient resources, including, but not limited to funds, opportunity, work force, knowledge base, support systems, physical aids, communication devices, and other physical assets that limit access to job training and outdoor recreation.~~

~~**[I] H. “Urban”** means an area within a metropolitan statistical area as defined by the United States office of management and budget.
 [11.2.171.7 NMAC – Rp, 11.2.171.7 NMAC, 12/17/2019; A, 9/15/2020]~~

11.2.171.8 PROPOSALS:
 At least annually, the commission will request proposals for YCC ~~[and OEG]~~ projects. The commission’s announcement will include where to obtain proposal information and the date by which proposals must be submitted.
 [11.2.171.8 NMAC – Rp, 11.2.171.15 NMAC, 12/17/2019; A, 9/15/2020]

11.2.171.9 YCC PROJECT ELIGIBILITY:
A. Project sponsors:
 The YCC Commission will accept applications from:
(1) A federally recognized sovereign tribal government within the state.
(2) A state agency.
(3) A local government agency.
(4) A federal agency operating within the state.

(5) A non-profit organization with a 501(c) internal revenue service designation operating within the state.

(6) Any organization or agency with a 501(c) fiscal sponsor.

B. Projects must be consistent with the purposes of the NMYCC program and may include, but need not be limited to, projects that:

(1) protect, conserve, rehabilitate or increase resiliency of terrestrial and aquatic species, forests, refuges, rangelands and waters of the state;

(2) improve use and access to public parks, greenways, historic sites, libraries, museums, zoos, recreational areas and associated facilities;

(3) reinforce the “keep New Mexico true” campaign;

(4) provide emergency assistance, disaster relief or recovery; or

(5) improve disaster preparedness; increase energy efficiency.

~~**(6)** beautify, improve and restore urban areas;~~

~~**(7)** renovate community facilities, including those for the elderly or indigent.~~

~~**[C.] Prohibited activities:** The following activities are prohibited in the conduct of any NMYCC project:~~

~~**(1)** the displacement or substitution of an existing employee by a corps member or the replacement of a seasonal employee normally hired by the project sponsor;~~

~~**(2)** the participation by corps members in the removal or cleaning up of any toxic or hazardous waste or toxic or hazardous waste site; and~~

~~**(3)** the assignment of corps members to general work activities such as, but not limited to, routine lawn mowing, routine litter control, janitorial duties and clerical tasks.]~~

[11.2.171.9 NMAC – Rp, 11.2.171.12

and 11.2.171.13 NMAC, 12/17/2019; A, 9/15/2020]

11.2.171.10 PROHIBITED

ACTIVITIES: The following activities are prohibited in the conduct of any NMYCC project:

A. the displacement or substitution of an existing employee by a corps member or the replacement of a seasonal employee normally hired by the project sponsor;

B. the participation by corps members in the removal or cleaning up of any toxic or hazardous waste or toxic or hazardous waste site; and

C. the assignment of corps members to general work activities such as, but not limited to, routine lawn mowing, routine litter control, janitorial duties and clerical tasks.

D. funding permanent capital improvements on privately owned property.

[11.2.171.10 NMAC – N, 9/15/2020]

~~11.2.171.10~~ 11.2.171.11 **YCC PROJECT**

REQUIREMENTS:

A. Project sponsors shall ensure that all project sites and practices conform to appropriate state and federal health and safety standards and requirements.

B. Project sponsors shall classify their programs as a summer, seasonal, or residential project; and also specify whether their project primarily engages Native American, rural, urban or other under-resourced populations.

C. Wages for corps members and corps leaders shall account for a minimum of seventy percent of the total funds requested.

D. Projects shall hire a minimum of four corps members and one corps crew leader or corps crew trainer.

E. Project sponsors must provide an education and training program to corps members for the duration of the project. The number of hours of training provided for each corps member shall be no less than ~~[twelve percent]~~ ten percent

of the total hours budgeted per corps member for the entirety of the project.

F. Project sponsors shall match a minimum of twenty percent of total funds requested with in-kind or cash contributions.

G. Project sponsors shall provide proof they have obtained permission from all land owners or managers where the project shall take place.

[H.] Project sites:

Projects may be undertaken on:

(1) public lands, waters or structures located within the state that are under the jurisdiction of the project sponsor or in accordance with a written agreement between the project sponsor and the agency that has jurisdiction over the public lands, waters or structures;

(2) lands, waters or structures owned or administered by a non-profit entity or federally recognized sovereign tribal government, provided that these facilities are open to the public on a reasonable basis, there is a public value or benefit to the project, and the facilities are located within the state;

(3) lands, waters or structures owned or administered by a nonprofit organization or federally recognized sovereign tribal government in accordance with a written agreement between the project sponsor and the nonprofit entity or federally recognized sovereign tribal government, provided that these facilities are open to the public on a reasonable basis, there is a public value or benefit to the project, and the facilities are located within the state.]

[F] H. Project sponsors shall have worker's compensation and unemployment insurance in place for the duration of the project.

[F] I. Program applicants shall provide proof of adequate insurance coverage for any liability arising out of program activities for the duration of the program.

[11.2.171.11 NMAC – Rn & A
11.171.2.10 NMAC, 9/15/2020]

11.2.171.12 YCC PROJECT

LOCATIONS: Projects may be undertaken on:

A. public or federally recognized tribal lands, waters or structures located within the state that

(1) are under the jurisdiction, owned or administered by the project sponsor; or

(2) are accessible to the project sponsor in accordance with a written agreement between the project sponsor and the agency or entity that owns, administers or has jurisdiction over the public or federally recognized tribal lands, waters or structures; and

(3) provided that the land or facilities are open to the public on a reasonable basis and there is a public value or benefit as a result of the project.

B. privately owned lands, waters or structures located within the state that

(1) are owned or administered by a nonprofit organization; or

(2) are accessible to the project sponsor in accordance with a written agreement between the project sponsor and the nonprofit organization; and

(3) provided that these the land or facilities are open to the public on a reasonable basis and there is a public value or benefit as a result of the project; and

(4) provided no funding for capital improvements is requested for the project.

[11.2.171.12 NMAC – N, 9/15/2020]

~~11.2.171.11~~ 11.2.171.13 **YCC** **CORPS MEMBERS:**

A. Project sponsors shall, at their own expense, comply with all applicable laws, regulations, rules ordinances, and requirements of local, state, and federal authorities, including but not limited to those pertaining to equal opportunity employment, workers compensation benefits, and fair labor standards.

B. Recruitment, selection, supervision, development

and dismissal of corps members will be the responsibility of the project sponsors.

C. Sponsors shall verify corps members meet the following eligibility requirements at the time of enrollment and keep records of such:

(1) are unemployed at the time of hire;

(2) are New Mexico residents consistent with NMAC 18.19.5;

(3) are in-school or out-of-school youth at the time of hire;

(4) are between the ages of 14 and 25 years of age at the time of hire;

(5) have a work permit if under the age of 16; and

(6) are not the children or siblings of the project sponsor's hiring officer or project supervisor.

D. Sponsors shall enforce all labor laws and shall be familiar with child labor laws as they apply to employees under the age of 18.

E. Classification:
(1) Corps members shall be individuals who meet the eligibility requirements and are at least 14 years of age at the beginning of the project.

(2) Corps crew leaders or corps crew trainers shall be individuals who meet the eligibility requirements, and serve in a leadership, trainer or mentor position.

[E] F. Compensation:
(1) All corps members shall be compensated, at a minimum, as provided by law following the state or municipality established minimum wage.

(2) ~~Corps members shall be individuals who meet the eligibility requirements and are at least 14 years of age at the beginning of the project.~~

(3) ~~Corps crew leaders or corps crew trainers shall be individuals who meet the eligibility requirements, are at least 18 years of age at the beginning of the project,~~

~~and serve in a leadership, trainer or mentor position.]~~

(4) (2) Project sponsors may request wage increases of no more than ten percent of starting wage for corps members based on promotion, performance or additional responsibilities; and if there are sufficient funds in the budget to complete the project as planned.

(5) (3) The YCC will support the project sponsor's existing policy for holiday pay and sick pay.

(6) (4) Project sponsors may not budget overtime pay into the cost proposal, and under no circumstances will the commission reimburse project sponsors for overtime.

(7) (5) The YCC will not reimburse the project sponsor for hazard pay.

(8) G. Project sponsors shall follow their established personnel policies for dismissal of corps members. Sponsors are encouraged to provide opportunities for improvement prior to dismissal.

[F] H. The length of a corps member's employment shall be determined by the duration of the work project in which the corps member is participating.

[G. ~~The maximum accumulated length of service for which a corps member may be employed on a YCC crew, including all projects in which the corps member participated, shall not exceed 24 months.]~~

[11.2.171.13 NMAC – Rn & A 11.2.171.11 NMAC, 9/15/2020]

~~[11.2.171.12]~~ **11.2.171.14 YCC EDUCATIONAL TUITION VOUCHERS AND ADDITIONAL CASH COMPENSATION:**

A. On completion of employment with the YCC, a corps member who has 12 full months (48 weeks) of employment as a corps member during a period not to exceed 48 months, and who has received satisfactory evaluations throughout their employment, may apply for a \$500.00 additional cash compensation or a \$1500.00 educational tuition voucher.

B. [The project sponsor shall certify that the corps member was employed for the duration of the project and the YCC staff shall verify same.

(1) ~~The educational voucher is good for reimbursement of expenses at a New Mexico institution of higher education, including accredited universities, colleges, community colleges, vocational schools and on-line education associated with an accredited New Mexico institution of higher education.~~

(2) ~~The educational tuition voucher is valid for two years and will be reimbursed upon presentation of receipts and proof of payment.~~

(a) ~~Examples of reimbursable expenses include educational expenses such as tuition, textbooks, and classroom and lab supplies.~~

(b) ~~Examples of non-reimbursable expenses include personal expenses, transportation, computers, residential rent, and food.~~

(3) ~~A corps member who receives satisfactory employment evaluations and has completed a minimum of six months employment but less than 12 months in a four-year period due to circumstances beyond the corps member's control, may receive a partial cash compensation or a partial educational tuition voucher.~~

(a) ~~Circumstances beyond a corps member's control may include but are not limited to: illness; death in the family; a return to school; family relocation.~~

(b) ~~Circumstances beyond the corps member's control do not include the unavailability of projects or that the project sponsor did not select them for employment with the project.]~~

A corps member who receives satisfactory employment evaluations and has completed a minimum of thirty-two weeks employment but less than 12 months (48 weeks) in a four-year period due to circumstances

beyond the corps member's control, may receive a partial cash compensation or a partial educational tuition voucher.

(1)

Circumstances beyond a corps member's control may include but are not limited to illness, death in the family, a return to school, or family relocation.

(2)

Circumstances beyond the corps member's control do not include the unavailability of projects or that the project sponsor did not select them for employment.

C. The YCC staff shall certify that the corps member was employed for the duration of the project.

(1) The educational voucher is good for reimbursement of expenses at a New Mexico institution of higher education, including accredited universities, colleges, community colleges, vocational schools and on-line education associated with an accredited New Mexico institution of higher education.

(2) The educational tuition voucher is valid for two years and will be reimbursed upon presentation of receipts and proof of payment.

(a)

Examples of reimbursable expenses include educational expenses such as tuition, textbooks, and classroom and lab supplies.

(b)

Examples of non-reimbursable expenses include personal expenses, transportation, computers, residential rent, and food.

[11.2.171.14 NMAC – Rn & A
11.2.171.12 NMAC, 9/15/2020]

11.2.171.13 — OEG PROGRAM ELIGIBILITY

A. The YCC Commission will accept applications from:

(1) A federally recognized sovereign tribal government within the state.

(2) A state agency.

(3) A local government agency.

(4) A federal agency operating within the state.

(5) A non-profit organization with a 501(c)(3) internal revenue service designation operating within the state.

(6) Any organization or agency with a 501(c)(3) fiscal sponsor.

(7) A privately-owned New Mexico resident business.

B. Programs must be consistent with the purposes of the outdoor equity grant program as described in the act, and may include, but are not limited to, programs that provide recreational opportunities and enhance outdoor skills and knowledge of activities such as bicycling, birdwatching, boating, camping, climbing, farming, fishing, flora and fauna identification, hang-gliding, hiking, horse-back riding, hot-air ballooning, hunting, jet skiing, mountain biking, mushrooming, nature study, off-highway vehicles, orienteering, paddling, rafting, ranching, rock-climbing, sandboarding, skiing, sledding, snowboarding, snowshoeing, and swimming.

[11.2.171.13 NMAC – N, 12/17/2019, Repealed 9/15/2020]

11.2.171.14 — OEG PROGRAM REQUIREMENTS:

A. Program sponsors shall ensure that all program components and practices conform to appropriate state and federal health and safety standards and requirements:

B. The majority of the program must take place outdoors, and the program shall be designed so that participants are actively engaging in outdoor recreational or educational activities the majority of the time.

C. Program applicants will specify whether their proposal primarily engages Native American, rural, urban or other under-resourced populations:

D. Programs that shall not be funded include, but are

not limited to, those that take place primarily indoors, such as classrooms or gymnasiums; museums, aquariums; zoos, festivals or events; organized youth sports, such as baseball or soccer; and service projects.

E. Program sites: Programs may occur in whole or partially on:

(1) public lands, waters or structures located within the state that are under jurisdiction of the program applicant or in accordance with a written agreement between the program sponsor and the agency that has jurisdiction over the public lands, waters or structures;

(2) privately-owned lands located within the state owned or leased by the program applicant or in accordance with a written agreement between the program applicant and the property owner;

(3) any lands, waters or structures located within the state that are owned or administered by a non-profit entity or federally recognized sovereign tribal government or in accordance with a written agreement between the program sponsor and the nonprofit entity or federally recognized sovereign tribal government.

F. Program applicants shall provide proof of adequate insurance coverage for any liability arising out of program activities for the duration of the program.

G. Service projects or publicly funded enhancements on private land that would increase the value of that land are prohibited.]

[11.2.171.14 NMAC – N, 12/17/2019, Repealed 9/15/2020]

11.2.171.15 EVALUATION OF PROPOSALS:

A. The commission shall adopt a competitive evaluation process to guide the allocation of funds.

B. The commission shall review and evaluate all proposals to determine the proposal's conformance with the goals of the programs as described in the act and

11.2.171 NMAC, Sections 9, 10, and 11 [~~13 and 14~~].

C. The commission shall take appropriate measures to ensure the evaluation process is not influenced by donors to the youth conservation corps [~~or outdoor equity fund~~]. This may include, but is not limited to, appointing an external review committee; and concealing the identity of applicants during the review process.

D. The commission will distribute funds equitably among qualified projects that variously engage Native American, rural, urban or other under-resourced populations. [11.2.171.15 NMAC – Rp, 11.2.171.16 NMAC, 12/17/2019; A, 9/15/2020]

11.2.171.16 AWARD AGREEMENTS: Successful applicants shall enter into a formal agreement with the commission for the expenditure of awarded funds. [11.2.171.16 NMAC – Rp, 11.2.171.17 NMAC, 12/17/2019; A, 9/15/2020]

11.2.171.17 FUNDS:
A. The commission may establish limitations on the availability and use of program funds. Any limitations shall be defined in the current application package

B. The commission may limit the amount of funding available for any element(s) of a program.

C. If money is not awarded in a given fiscal year due to the lack of applications meeting minimum requirements, the commission may reassign the funds to a non-funded or under-funded program that meets all the minimum requirements or may carry them over into the total program allocation for the next fiscal year. [11.2.171.17 NMAC – Rp, 11.2.171.9 NMAC, 12/17/2019; A, 9/15/2020]

HISTORY of 11.2.171 NMAC:

Pre-NMAC History:

The material in this Part was derived from that previously filed with the state records center & archives under;

NMYCC Rule No. 92-1, Rules and Regulations Governing the New Mexico Youth Conservation Corps, filed November 20, 1992.

History of Repealed Material:

11.2.171 NMAC, The Youth Conservation Corps (YCC) Program, filed 4/30/2001, was repealed and replaced by 11.2.171 NMAC, The Youth Conservation Corps (YCC) Program and Outdoor Equity Grant (OEG) Program, effective 12/17/2019.

11.2.171 NMAC was renamed from ‘The Youth Conservation Corps (YCC) And Outdoor Equity Grant (OEG) Programs’ to ‘The Youth Conservation Corps (YCC) Program’ effective 9/15/2020.

Other History: 11 NMAC 2.YCC, The Youth Conservation Corps (YCC) Program, filed 5/14/1997, was reformatted, renumbered, and amended to 11.2.171 NMAC effective 4/30/2001.

**HEALTH,
DEPARTMENT OF**

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed amendment of rule, 7.8.2 NMAC, “Assisted Living Facilities for Adults.” The public hearing will be held on August 18, 2020 at 9:30 am via Cisco Webex online, via telephone, and, comments will be received via email through the day of the hearing until 5:00 pm.

The hearing is being held via internet, email and telephonic means due to the concerns surrounding Coronavirus and in accord with Governor Michelle Lujan Grisham’s Executive Order 2020-004, Declaration of a Public Health Emergency, and any subsequent executive orders, and the March 12, 2020 Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19. This hearing will be conducted to receive public comment regarding

the proposed amendment of the current rule concerning the services for residents at facilities operated for the maintenance or care of two (2) or more adults who need or desire assistance with one (1) or more activities of daily living excluding the residence of an individual who maintains or cares for a maximum of two (2) relatives. All facilities licensed as assisted living facilities pursuant to Section 24-1-5 (A) NMSA 1978, are subject to all provisions of these regulations.

The hearing will be conducted to receive public comments regarding the proposed amendment of the rule, 7.8.2 NMAC, including the following rule parts:

Amended Subsection B of 7.8.2.16 NMAC-Staff Qualifications: change to Subsection B to lower the age of employment to provide direct care to residents to sixteen (16) years of age.

The legal authority authorizing the proposed amendment of the rule by the Department is at Subsection E of Section 9-7-6, Subsection F of Section 24-1-2, Subsection J of Section 24-1-3 and Subsection B of Section 24-1-5 NMSA 1978.

A free copy of the full text of the proposed rule can be obtained from the Department’s website at <https://nmhealth.org/publication/regulation/>.

Any interested member of the public may attend the hearing and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: please call 1-408-418-9388. Your telephone comments will be recorded. To access the hearing via internet: please go to Webex.com; click the “Join” button; click the “Join a meeting” button; enter the following meeting number and password where indicated on screen—Meeting number (access code): 146 196 1418 #, Meeting password: JXrp2crfa72; click the “OK” button. You may also provide comment via Chat during the live streaming.

Written public comments may also be submitted to the mailing address shown below. Please submit any written comments regarding the proposed rule to the attention of:

Christopher Burmeister
Division Director, Health Improvement
New Mexico Department of Health
2040 S. Pacheco,
Santa Fe, NM 87505
Christopher.Burmeis@state.nm.us
505-476-9074

Mailed written comments must be received by 5 pm MST on August 17, 2020. Written comments may also be submitted to the email address shown above through 5:00 pm MST on the date of the hearing. All written comments will be published on the agency website at <https://nmhealth.org/publication/regulation/> within 3 days of receipt, and will be available at the New Mexico Department of Health Office of General Counsel for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public video/telephonic rulemaking hearing on August 18, 2020. The hearing will begin at 10:00 a.m. and will be held via GoToMeeting. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to **5.99.1 NMAC, PUBLIC AND PRIVATE POST-**

SECONDARY INSTITUTIONS OPERATING UNDER THE INTERSTATE DISTANCE EDUCATION ACT.

Join via video:
<https://global.gotomeeting.com/join/821888813>

Join via telephone:
+1 (872) 240-3212

Access Code:
821-888-813

Amendments:

5.99.1.7 NMAC, DEFINITIONS
5.99.1.10 NMAC, INSTITUTIONS
EXEMPT FROM DISTANCE
EDUCATION AUTHORIZATION
5.99.1.12 NMAC, DISTANCE
EDUCATION AUTHORIZATION
APPLICATION REQUIREMENTS
5.99.1.16 NMAC, SARA
INSTITUTIONS
5.99.1.18 NMAC APPLICABLE
SARA FEES, SURETY BOND

Purpose:

Pursuant to Section 2.1 of the NC-SARA Manual by January 1, 2021 NC-SARA member states shall develop and implement a means to hear and internally resolve appeals from institutions for which they deny initial participation or renewal of participation in NC-SARA. The proposed amendment updates definitions and modifies section 5.99.1.18 NMAC to include the proposed appeal process. The proposed amendment also adds criteria for exemption from obtaining distance education authorization for chartered, nonprofit religious institutions. In addition, the amendment sets a minimum surety bond amount for private post-secondary educational institutions and additional document requirements for any for profit institutions with student gross tuition revenues of \$100,000 or more.

Summary of proposed changes:

The amendment to Section 5.99.1.7 NMAC add the definitions “State

portal agent”. Subsequent definitions in the section are renumbered to accommodate for the proposed definition.

The amendment to Section 5.99.1.10 NMAC adds criteria for exemption from obtaining distance education authorization for chartered, nonprofit religious institutions.

The amendment to Section 5.99.1.12 NMAC adds a minimum surety bond amount for private post-secondary educational institutions and the requirement that for profit institutions with student gross tuition revenues of \$100,000 or more submit a letter of good standing from the Office of the Secretary of State of New Mexico and proof of registration with the New Mexico Taxation and Revenue Department.

The amendment to Section 5.99.1.16 NMAC consists of non-substantive formatting corrections to conform with current legislative styles.

The amendment to Section 5.99.1.18 NMAC proposes to rename the section to accommodate for the addition of an appeal process. Pursuant to Section 2.1 of the NC-SARA Manual the amendment to 5.99.1.19 NMAC develops and implements a means to hear and internally resolve appeals from institutions that have been denied initial participation or renewal of participation in NC-SARA.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the “Events” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd. Info@state.nm.us or (505)476-8411.

A public hearing will be held on August 18, 2020 from 10:00 a.m.

until 10:30 a.m. via GoToMeeting. Any person who is or may be affected by this proposed rule may participate. **Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@state.nm.us. Written comments must be received no later than 4:00 p.m. on August 14, 2020.** Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23B-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@state.nm.us ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Higher Education Department (NMHED or Department) will hold a public video/telephonic rulemaking hearing on August 18, 2020. The hearing will begin at 9:00 a.m. and will be held via GoToMeeting. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to **5.100.6 NMAC, REGISTRATION UNDER THE POST-SECONDARY**

EDUCATIONAL INSTITUTION ACT.

Join via video:
<https://global.gotomeeting.com/join/848917661>

Join via telephone:
1 (872) 240-3412

Access Code:
848-917-661

Amendments:

5.100.6.7 NMAC, DEFINITIONS
5.100.6.13 NMAC, MATERIALS
AND INFORMATION
5.100.6.20 NMAC, REPORTING
REQUIREMENTS

Purpose:

The purpose of the proposed rule change is to incorporate new requirements implemented through the signing of H.B.17, 55th Leg., 1st Sess. (N.M. 2020).

Summary of proposed changes:

The amendments to Section 5.100.6.7 NMAC add the definitions “Career School”, “Enrollment agreement”, “Private post-secondary educational institution” and “Prospective student”. Other definitions in the section are renumbered to accommodate for the proposed definitions. The definition “Post-secondary educational institution” or “post-secondary institution” is modified to clarify operation is from a physical site in New Mexico, through distance education, correspondence or in person.

The amendment to Section 5.100.6.13 NMAC removes the Subsection B “Enrollment agreement” as the provisions are included in Section 5.100.6.11 NMAC. The Subsection is replaced with “Information provided to students” which lists information that must be provided prior to the signing of an enrollment.

The amendment to 5.100.6.20 NMAC adds reporting conditions and lists specific items the institution must

report on an annual basis.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the “Events” section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd.Info@state.nm.us or (505)476-8411.

A public hearing will be held on August 18, 2020 from 9:00 a.m. until 9:30 a.m. via GoToMeeting. Any person who is or may be affected by this proposed rule may participate.

Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@state.nm.us. Written comments must be received no later than 4:00 p.m. on August 14, 2020. Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@state.nm.us ten (10) business days prior to the hearing.

HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN

that the New Mexico Higher Education Department (NMHED or Department) will hold a public video/ telephonic rulemaking hearing on August 18, 2020. The hearing will begin at 9:30 a.m. and will be held via GoToMeeting. The purpose of the rulemaking hearing is to take public comment regarding proposed amendments to **5.100.7 NMAC, LICENSURE UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT.**

Join via video:

<https://global.gotomeeting.com/join/846459853>

Join via telephone:

1 (224) 501-3412

Access Code:

846-459-853

Amendments:

- 5.100.7.7 NMAC, DEFINITIONS
- 5.100.7.9 NMAC, TYPES OF LICENSURE
- 5.100.7.10 NMAC, APPLICATION REQUIREMENTS
- 5.100.7.11, REVIEW COMMITTEE
- 5.100.7.14, REPORTING REQUIREMENTS
- 5.100.7.16, PENALTY

Purpose:

Several of the proposed amendments are based upon changes resulting from the signing of H.B. 17, 55th Leg., 1st Sess. (N.M. 2020). Amendments modify or add definitions. Criteria pertaining to provisional licensure status are added and the requirement that an institution must reapply for a provisional license for a minimum of two consecutive years is removed. The amendments add information which must be provided to students prior to the signing of an enrollment agreement and requires that the

institution maintain record they provided the information. The time frame for degree-granting institutions to obtain accreditation with an accrediting agency recognized is expanded. The number of annual committee review meetings is lowered. Reporting requirements are added to ensure information is made available to prospective students and records are maintained. Additional reporting provisions are added. The length of time an institution must remain on a provisional status in the event of a missed renewal is reduced.

Summary of proposed changes:

The amendments to Section 5.100.7.7 NMAC add the definitions "Private post-secondary educational institution" and "Prospective student". Other definitions in the section are renumbered to accommodate for the proposed definitions. The definition "Post-secondary educational institution" or "post-secondary institution" is modified to clarify operation is from a physical site in New Mexico, through distance education, correspondence or in person.

The amendments to Section 5.100.7.9 NMAC update requirements relating to provisional licensure status of a degree granting institution seeking accreditation status. The requirement that an institution must reapply for a provisional license for a minimum of two consecutive years is removed.

The amendment to 5.100.7.10 NMAC lists additional information which must be provided to students prior to the signing of an enrollment agreement and requires that the institution maintain record they provided the information. Paragraphs within the Subsection are renumbered to accommodate for the proposed provisions and a non-substantive formatting correction is made to conform to current legislative styles at the direction of the Commission of Public Records. The time frame for degree-granting institutions to obtain accreditation with an accrediting agency recognized is expanded.

The amendment to 5.100.7.11 NMAC also lowers the minimum number of annual committee review meetings. The amendment to 5.100.7.14 NMAC adds reporting conditions and lists specific items the institution must report on an annual basis. In addition, the amendment adds a provision that the institution must maintain records of their efforts to provide the information to prospective student for at least five years after the student enrolls at the institution.

Details for Obtaining a Copy, Public Hearing and Comments:

The proposed rule is available at NMHED located at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505-2100. The proposed rule is also posted on the NMHED website and may be accessed at <http://www.hed.state.nm.us/> under the "Events" section. To request that a copy of the proposed rule be sent to you by mail or e-mail, please contact HigherEd. Info@state.nm.us or (505)476-8411.

A public hearing will be held on August 18, 2020 from 9:30 a.m. until 10:00 a.m. via GoToMeeting. Any person who is or may be affected by this proposed rule may participate.

Interested persons may submit written comments to NMHED at 2044 Galisteo Street, Suite 4, Santa Fe, NM 87505 or HigherEd.Info@state.nm.us. Written comments must be received no later than 4:00 p.m. on August 14, 2020. Please note that any written or verbal comments received will become part of the rulemaking record, be posted to the New Mexico Sunshine Portal, and be accessible to the public. If submitting written comments by email, please indicate in the subject line the number and section of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in Section 9-25-1 et seq. NMSA 1978, Section 21-1-26 NMSA 1978 and Section 21-23-1 et seq. NMSA 1978.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 476-8411 or email HigherEd.Info@state.nm.us ten (10) business days prior to the hearing.

HUMAN SERVICES DEPARTMENT

NOTICE OF PUBLIC HEARING

The Human Service Department is required by Federal Law to file a State Plan that describes how the Department will administer the State's Low Income Home Energy Assistance Program (LIHEAP). The State Plan must be submitted every year to the United States Department of Health and Human Services (DHHS), Administration for Children and Families (ACF). The Department is required to offer a 30-day comment period for the LIHEAP State Plan that includes Weatherization prior to submittal.

The Department proposes the New Mexico LIHEAP State Plan covering the period of October 1, 2020 to September 30, 2021. All comments received will be considered for the New Mexico LIHEAP State Plan.

The proposed State Plan is available on and can be printed from the Department's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>. A copy of the proposed LIHEAP State Plan is available in written format upon request. Please call the Income Support Division at 1-505-827-7266 to request a copy. You may also send a request to:

Human Services Department
Income Support Division
Attn: Work and Family Support
Bureau/ LIHEAP
39-B Plaza La Prensa
Santa Fe, New Mexico 87507-2348

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, 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 and special accommodations.

A virtual public hearing to receive comments on this proposed regulation will be held on August 14, 2020, from 9:00 a.m. to 10:00 a.m. The hearing will be held virtually via the on line platform Go-To Meeting. Interested persons may address written or recorded comments to:

Human Services Department
39-B Plaza La Prensa
Santa Fe, NM 87507-2348

Interested persons may also address comments via electronic mail to: HSD-isdrules@state.nm.us. All written comments will be published on the agency's website at <https://www.hsd.state.nm.us/> within 3 days of receipt.

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 Tuesday, August 25, 2020 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 location of the public hearing may be subject to change due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan Grisham's Executive Order 2020-004, Declaration of a Public

Health Emergency; and Executive Order 2020-053, Renewing the State of Public Health Emergency Initially Declared in Executive Order 2020-004, Other Powers Invoked in That Order, and All Other Orders and Directives Contained in Executive Orders Tied to the Ongoing Public Health Emergency. Continuous updates on hearing changes and Zoom information will be provided on the PED website. The purpose of the public hearing is to receive public input on the proposed amendment of 6.80.4 NMAC, Charter School Application and Appeal Requirements; and repeal of 6.101.2, NMAC, Fair Hearings Related to Vocational Rehabilitation, to be replaced with 6.101.2 NMAC, Fair Hearings and Alternative Dispute Resolutions Related to Vocational Rehabilitation. 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 amendment of **6.80.4 NMAC, Charter School Application and Appeal Requirements**, is to require additional assurances in a start-up charter school application, including assurances relating to the establishment of an executive director's equity council; the development of a culturally and linguistically relevant framework; and a plan for the displacement of students, teachers, and other employees who will not attend or be employed in the charter school. Additionally, the proposed amendment allows a chartering authority to deny an application for a proposed charter school on tribal land, if the proposed charter school fails to receive approval from the tribal government prior to the authorizer's decision on the proposed charter school. The chartering

authority may also refuse to renew a charter for a charter school located on tribal land, if the charter school failed to comply with ongoing tribal consultation requirements. Moreover, if the chartering authority suspends, revokes, or does not renew the charter of a charter school located on tribal land, the chartering authority and charter school are required to consult with the tribe. Finally, the proposed amendment removes the requirement that the Charter Schools Division review, analyze, outline, and set forth a recommendation and report to the Secretary regarding charter school appeals.

The purpose of the proposed repeal of **6.101.2 NMAC, Fair Hearings Related to Vocational Rehabilitation**, to be replaced with **6.101.2 NMAC, Fair Hearings and Alternative Dispute Resolutions Related to Vocational Rehabilitation**, is to establish a means by which an individual who has applied for or is a recipient of vocational rehabilitation services can appeal or request mediation of the following: a determination of a counselor concerning the furnishing or denial of services; or any action or inaction of the division of vocational rehabilitation or the director of vocational rehabilitation. A request for a fair hearing or mediation is to be construed liberally to allow a client to seek redress for Division of Vocational Rehabilitation (DVR) decisions that affect their case.

Statutory Authorization(s):

Sections 9-24-8, 22-2-1, 22-2-2, 22-8-1 et seq., 22-8B-1 et seq., 22-14-8, and 22-14-12 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 121, Santa Fe, New Mexico 87501, by

electronic mail to 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 Tuesday, August 25, 2020. The PED encourages the early submission of written comments. The public comment period is from July 14, 2020 to August 25, 2020 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.

**PUBLIC REGULATION
COMMISSION**

**NOTICE OF PROPOSED
RULEMAKING
CASE NO. 20-00105-FM**

The New Mexico Public Regulation Commission (the "commission") gives notice of its initiation of a proposed rulemaking to repeal and replace **Rules 10.25.1, 10.25.2, and 10.25.5 NMAC**. The rules which may be adopted as the final rules in this proceeding may include all, part, or none of the language in the proposed rules issued by the commission. The commission may

also consider alternative proposals for amending or replacing the current rules.

Concise statement of proposed rules:

The commission is considering repealing and replacing Rules 10.25.1, 10.25.2, and 10.25.5 NMAC. The commission is considering changes to many sections of the rules. In particular, the commission is considering changes regarding the inspection and testing of fire and smoke dampers in accordance with evolving National Fire Protection Association standards, provisions within general provisions, which part contains, among other things, definitions that are used in Part 5, provisions within certificates of fitness, which contains provisions establishing the methods of becoming certified to install, test, and inspect fire and smoke dampers, and other changes to modernize the rules.

Constitutional and statutory authority:

New Mexico Constitution, Article XI, Sec. 2; Paragraph 10 of Subsection B of Section 8-8-4 NMSA 1978 (1998), Section 8-8-15 NMSA 1978 (1999, amended 2001), Section 59A-52-15 NMSA 1978 (amended 2017), and Section 59A-52-15.1 NMSA 1978 (amended 2017).

A copy of the full text of the proposed rules may be obtained from the Rulemaking Proceedings section of the Commission's website at <http://www.nmprc.state.nm.us> under Case No. 20-00105-FM or by calling Isaac Sullivan-Leshin in the Office of General Counsel at (505) 670-4830.

Written initial comments and written response comments shall be filed by the deadlines below. Currently, due to the COVID-19 pandemic and orders of the governor pertaining thereto, the commission has adopted emergency electronic filing procedures, which may or may not be in place at the time that comments are filed in this docket. In the alternative, the commission may revert to the filing procedures in place before the emergency electronic filing procedures were instituted, in

which case such filings shall be made with the commission's records bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the commission's records management bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501. For information as to how to file at the time of filing, please contact Melanie Sandoval, the commission's records bureau chief at melanie.sandoval@state.nm.us or (505) 827-6968. Written initial comments shall be filed no later than **August 31, 2020** and written response comments shall be filed no later than **September 14, 2020**. Comments shall refer to Case No. 20-00105-FM. All written comments will be posted on the commission's website within three days of their receipt by the records bureau.

A public hearing will be held on **October 21, 2020, beginning at 2:00 p.m.** at the offices of the commission located in the 4th Floor Hearing Room at 1120 Paseo de Peralta, Santa Fe, NM 87501. If emergency conditions arising from the COVID-19 pandemic persist at that time, the commission will announce any alternative forum, such as a conference call, through which the hearing may be held. The purpose of the hearing is to give interested persons an opportunity to give oral comments. The commission may limit the time for each comment to five minutes. The record of this case will close on **November 4, 2020**.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Mr. Bradford Borman at (505) 827-4048 at least 48 hours prior to the commencement of the hearing.

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission ("Commission") will be hosting a virtual meeting and rule hearing on Thursday August 13, 2020 beginning at 9:00 a.m. For instructions on how to virtually attend this meeting, visit the Department's website at <http://www.wildlife.state.nm.us/commission/webcast/>. The purpose of this meeting is to hear and consider action as appropriate on the following: presentation of proposed changes to the Boundary Descriptions for Game Management Units rule.

Synopsis:

The proposal is to amend the Boundary Descriptions for Game Management Units rule, 19.30.4 NMAC, which will become effective August 25, 2020. The Boundary Descriptions for Game Management Units rule is a permanent rule.

The proposed new rule will include reassigning an area to a different GMU based on land features, and making corrections to 1) neighboring GMUs that overlap each other, and 2) to neighboring GMUs that leave a gap between them. It also includes modifying boundary descriptions such that they: correspond to actual features; cite correct/commonly used feature names; include sufficient detail for a complete boundary description; and reflect updated changes on the ground.

A full text of changes will be available on the Department's website at: www.wildlife.state.nm.us. Interested persons may submit comments on the proposed changes to the Boundary Descriptions for Game Management Units rule at DGF-Boundary-Rule@state.nm.us, or individuals may submit written comments to the physical address below. Comments are due by 8:00 a.m. on August 13, 2020. The final

proposed rule will be voted on by the Commission during a virtual public meeting on August 13, 2020. Interested persons may also provide data, views or arguments, orally or in writing, at the virtual public rule hearing to be held on August 13, 2020.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department's website at www.wildlife.state.nm.us/commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director's Office at (505) 476-8000, or the Department's website at www.wildlife.state.nm.us 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 General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission's Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

GAME AND FISH DEPARTMENT

STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a virtual meeting and rule hearing on Thursday August 13, 2020 beginning at 9:00 a.m. For instructions on how to virtually attend this meeting, visit the Department’s website at <http://www.wildlife.state.nm.us/commission/webcast/>. The purpose of this meeting is to hear and consider action as appropriate on the following: presentation of proposed changes to the Migratory Game Bird rule.

Synopsis:

The proposal is to amend the Migratory Game Bird rule, 19.31.6 NMAC, which will become effective September 1, 2020. The most recent Migratory Game Bird rule expired on March 31, 2020.

The proposed new rule will include changes to regular waterfowl season dates, changes to the sandhill crane allocation based on fall population data, and moving the youth crane hunt to November.

A full text of changes will be available on the Department’s website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to the Migratory Game Bird rule at DGF-waterfowl@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 8:00 a.m. on August 13, 2020. The final proposed rule will be voted on by the Commission during a virtual public meeting on August 13, 2020. Interested persons may also provide data, views or arguments, orally or in writing, at the virtual public rule hearing to be held on August 13, 2020.

Full copies of text of the proposed

new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department’s website at www.wildlife.state.nm.us/commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director’s Office at (505) 476-8000, or the Department’s website at www.wildlife.state.nm.us 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 General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission’s Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (“Superintendent”), pursuant to the New Mexico Insurance Code, Sections 59A-1-1 et seq. NMSA 1978 (“Insurance Code”) and 13.1.4 NMAC, proposes to adopt amendments to rule

13.2.2 INSURANCE HOLDING COMPANIES.

PURPOSE OF THE PROPOSED AMENDMENTS The proposed amendments: (1) provide necessary clean up of language, spelling errors and citations; (2) provide authority to the Superintendent to participate in a supervisory college for any domestic insurer with international operations; and (3) establish requirements for group-wide supervision of internationally active insurance groups.

STATUTORY AUTHORITY: Section 59A-2-9, and Chapter 59A Article 37, NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed rules are available by electronic download from the OSI website (<https://www.osi.state.nm.us/index.php/idms/>) or the New Mexico Sunshine portal.

OSI will hold a public video/ telephonic hearing on the proposed rules on August 17, 2020 at 9:00 a.m.

Join via Video: <https://us02web.zoom.us/j/2916274744>

Join via telephone: 1-346-248-7799
Meeting ID: 291 627 4744

The Superintendent designates Bryan E. Brock to act as the hearing officer for this rulemaking. Oral comments will be accepted at the video/ telephonic hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on August 14, 2020. Responses to written comments or oral comments will be accepted through 4:00 pm on August 28, 2020. Comments may be submitted via email to OSI-docketfiling@state.nm.us or may be filed by sending original copies to:

OSI Records and Docketing, NM
Office of Superintendent of Insurance
1120 Paseo de Peralta, P.O. Box 1689,
Santa Fe, NM 87504-1689

Docket No.: 20-00039-RULE-PC
IN THE MATTER OF ADOPTING
AMENDMENTS TO RULE 13.2.2
NMAC INSURANCE HOLDING
COMPANIES

Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings after 4:00 will be filed to the docket the next business day.

SPECIAL NEEDS: Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Melissa Gutierrez at 505-476-0333 ten (10) business days prior to the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses.

ISSUED this 14th day of July 2020
/S/RUSSELL TOAL

**SUPERINTENDENT OF
INSURANCE,
OFFICE OF**

**NOTICE OF PROPOSED
RULEMAKING**

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (“Superintendent”), pursuant to the New Mexico Insurance Code, Sections 59A-1 -1 et seq. NMSA 1978 (“Insurance Code”) and 13.1.4 NMAC, proposes to adopt amendments to rule 13.2.5 ANNUAL

AUDITED FINANCIAL REPORTS.

PURPOSE OF THE PROPOSED AMENDMENTS The proposed amendments: (1) provide necessary clean up of language, spelling errors and citations; and (2) insert an Internal Audit Function Requirements section into the Rule.

STATUTORY AUTHORITY: Sections 59A-2-8, 59A-2-9, and Chapter 59A Article 37, NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed rules are available by electronic download from the OSI website (<https://www.osi.state.nm.us/index.php/idms/>) or the New Mexico Sunshine portal.

OSI will hold a public video/ telephonic hearing on the proposed rules on August 17, 2020 at 10:00 a.m.

Join via Video: <https://us02web.zoom.us/j/2916274744>

Join via telephone: 1-346-248-7799
Meeting ID: 291 627 4744

The Superintendent designates Bryan E. Brock to act as the hearing officer for this rulemaking. Oral comments will be accepted at the video/ telephonic hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on August 14, 2020. Responses to written comments or oral comments will be accepted through 4:00 pm on August 28, 2020. Comments may be submitted via email to OSI-docketfiling@state.nm.us or may be filed by sending original copies to:

OSI Records and Docketing, NM
Office of Superintendent of Insurance
1120 Paseo de Peralta, P.O. Box 1689,
Santa Fe, NM 87504-1689

Docket No.: 20-00040-RULE-PC
IN THE MATTER OF ADOPTING
AMENDMENTS TO RULE 13.2.5
NMAC ANNUAL AUDITED
FINANCIAL REPORTS

Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings after 4:00 will be filed to the docket the next business day.

SPECIAL NEEDS: Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Melissa Gutierrez at 505-476-0333 ten (10) business days prior to the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses.

ISSUED this 14th day of July 2020
/S/RUSSELL TOAL

**SUPERINTENDENT OF
INSURANCE,
OFFICE OF**

**NOTICE OF PROPOSED
RULEMAKING**

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (“Superintendent”), pursuant to the New Mexico Insurance Code, Sections 59A-1 -1 et seq. NMSA 1978 (“Insurance Code”) and 13.1.4 NMAC, proposes to adopt new rules 13.10.3 NMAC MINIMUM STANDARDS FOR SHORT-TERM PLANS and 13.10.34 NMAC STANDARDS FOR ACCIDENT ONLY, SPECIFIED DISEASE OR ILLNESS, HOSPITAL INDEMNITY, AND RELATED EXCEPTED BENEFITS.

PURPOSE OF THE PROPOSED NEW RULES:

13.10.3 NMAC is to establish regulatory requirements for short-term health benefit plans. The rule will standardize and simplify the terms and coverages, facilitate public understanding and comparison of coverage, and prohibit provisions that may be misleading or confusing in connection with such plans.

13.10.34 NMAC is to establish regulatory requirements for the subject excepted benefit plans. The rule will standardize and simplify the terms and coverages; facilitate public understanding and comparison of coverage; eliminate provisions that may be misleading or confusing in connection with the purchase and renewal of the coverages or with the settlement of claims; and require disclosures in the marketing and sale of excepted benefit plans.

STATUTORY AUTHORITY

Section 59A-23G-1 et seq. NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed new rules are available by electronic download from the OSI website (<https://www.osi.state.nm.us/index.php/idms/>) and the New Mexico Sunshine portal.

OSI will hold a public video/telephonic hearing on the proposed new rules on August 13, 2020 at 9:00 a.m.

Join via Video: <https://us02web.zoom.us/j/2916274744>

Join via telephone: 1-346-248-7799
Meeting ID: 291 627 4744

The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the video/telephonic hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on the day of the public hearing, or the last day of the public hearing if the public

hearing extends for more than one day. Responses to written comments or oral comments will be accepted through 4:00 pm on August 24, 2020. Comments may be submitted via email to OSI-docketfiling@state.nm.us or may be filed by sending original copies to:

OSI Records and Docketing, NM
Office of Superintendent of Insurance
1120 Paseo de Peralta, P.O. Box 1689,
Santa Fe, NM 87504-1689

Docket No.: 20-00042-RULE-LH
IN THE MATTER OF ADOPTING
NEW RULES 13.10.3 MINIMUM
STANDARDS FOR SHORT-TERM
PLANS

Docket No.: 20-00043-RULE-LH
IN THE MATTER OF ADOPTING
NEW RULES 13.10.34 NMAC
STANDARD FOR ACCIDENT
ONLY, SPECIFIED DISEASE OR
ILLNESS, HOSPITAL INDEMNITY,
AND RELATED EXCEPTED
BENEFITS

Only signed statements, proposals or comments will be accepted. Scanned or electronic signatures conforming to federal and state court requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic or facsimile signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings received after 4:00 pm on a weekday will be filed to the docket the next business day.

SPECIAL NEEDS: Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Melissa Gutierrez at 505-476-0333 ten (10) business days prior to the hearing.

The Superintendent will consider all oral comments, and will review all

timely submitted written comments and responses.

ISSUED this 14th day of July 2020
/S/RUSSELL TOAL

WORKFORCE SOLUTIONS DEPARTMENT**NOTICE OF RULEMAKING**

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing in the conference room of the Human Rights Bureau located at 1596 Pacheco Street Suite 103 in Santa Fe, New Mexico, 87505 on August 19, 2020 from 10:00 am to 12:00 pm. The public comment hearing will also be conducted virtually. Instructions regarding how to join the virtual meeting will be posted on the NMDWS website at <https://www.dws.state.nm.us/>. The purpose of the public hearing will be to obtain input and public comment on proposed changes to 9.1.1 NMAC.

Summary: amending the regulation governing the human rights act to change the procedures for issuance of Notices of Rights to Sue, drafting and amending charges of discrimination, and mediations and conciliations.

Under NMSA 1978 §§28-1-1 to 28-1-14 and 28-23-1 through 28-23-6, the Department is the agency responsible for the Human Rights Bureau.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Written comments must be received no later than 5 p.m. on August 18, 2020. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by

calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rule will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

WORKFORCE SOLUTIONS DEPARTMENT

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing in the conference room of the Human Rights Bureau located at 1596 Pacheco Street Suite 103 in Santa Fe, New Mexico, 87505 on August 19, 2020 from 1:00 pm to 3:00 pm. The public comment hearing will also be conducted virtually. Instructions regarding how to join the virtual meeting will be posted on the NMDWS website at <https://www.dws.state.nm.us/>. The purpose of the public hearing will be to obtain input and public comment on proposed changes to 11.1.2 NMAC.

Summary: The updated rule also implements changes to the policies and procedures regarding enforcement of the Public Works Minimum Wage Act as well as amending the process for determining the zone and subsistence pay rates for public works projects.

Under Section 9-26-4, NMSA 1978, the Workforce Solutions Department is responsible for the administration of the labor relations division which oversees setting the prevailing wage and fringe benefit rates. Pursuant to Section 13-4-11, NMSA 1978, the Director of the Labor Relations

Division shall determine the prevailing wage rates and the prevailing fringe benefit rates.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Written comments must be received no later than 5 p.m. on August 18, 2020. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed online at <https://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rule will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

End of Notices of Rulemaking and Proposed Rules

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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.

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

This is an amendment to 8.8.3 NMAC Sections 6 and 10 effective 7/14/2020.

8.8.3.6 OBJECTIVE:

A. The purpose of these regulations is to set out general provisions regarding background checks and employment history verification required in settings to which these regulations apply.

B. Background checks are conducted in order to identify information in applicants' backgrounds bearing on whether they are eligible to provide services in settings to which these regulations apply.

C. Abuse and neglect screens of databases in New Mexico are conducted by BCU staff in order to identify those persons who pose a continuing threat of abuse or neglect to care recipients in settings to which these regulations apply. Applicants required to obtain background checks pursuant to 8.16.2 NMAC and 8.17.2 NMAC will also undergo a screen of abuse and neglect information and an inter-state criminal history check in each State where the applicant resided during the preceding five years.

[8.8.3.6 NMAC - Rp, 8.8.3.6 NMAC, 10/1/2016, A, 10/1/2019; A, 7/14/2020]

8.8.3.10 COMPLIANCE:

A. Compliance with these regulations is a condition of licensure, registration, certification or renewal, or continuation of same or participation in any other program or contract within the scope of these regulations.

B. The licensee is required to:

- (1) submit

an electronic fingerprint submission receipt and the required forms for all direct providers of care, household members in licensed and registered child care homes, or any staff member, employee, or volunteer present while care recipients are present, or other adult as required by the applicable regulations prior to the commencement of service, whether employment or, contractual, or volunteer. In the case of a licensed child care home and a registered home, the licensee must submit an electronic fingerprint submission receipt and the required forms for new household members or for any adult who is required to obtain a background check pursuant to 8.16.2 NMAC or 8.17.2 NMAC as applicable. However, in the case of a registered family child care food-only home, all household members are only required to undergo a criminal history and child abuse and neglect screening.

(2) Applicants required to obtain background checks pursuant to 8.16.2 NMAC and 8.17.2 NMAC must indicate states where they resided during the preceding five years and obtain the following:

(a) a screen of abuse and neglect information in each state where the applicant resided during the preceding five years; and

(b) an inter-state criminal history check in each state where a new applicant resided during the preceding five years. An inter-state criminal history check is not required if a new applicant has resided in a state that participates in the federal bureau of investigation's national fingerprint file. All existing staff hired after October 1, 2016, must undergo an inter-state criminal history check in

each state where the applicant resided during the preceding five years at the time of application. An inter-state criminal history check is not required if an applicant has resided in a state that participates in the federal bureau of investigation's national fingerprint file.

(2) (3) verify the employment history of any prospective direct provider of care by contacting references and prior employers/agencies to elicit information regarding the reason for leaving prior employment or service; the verification shall be documented and available for review by the licensing authority; EXCEPTION: verification of employment history is not required for registered home providers or child care homes licensed for six or fewer children.

(3) (4) submit an adult household member written statement form for each adult household member in a registered family child care food-only home setting in order to conduct criminal history and child abuse and neglect screens on such household members; an adult household member is an adult living in the household or an adult that spends a significant amount of time in the home; the licensee must submit the required forms for new adult household members pursuant to 8.17.2 NMAC.

(4) (5) provide such other information BCU staff determines to be necessary; and

(5) (6) maintain documentation of all applications, correspondence and eligibility relating to the background checks required; in the event that the licensee does not have a copy of an applicant's eligibility documentation and upon receipt of a written request for a copy, the BCU may issue duplicate eligibility documentation

to the original licensee provided that the request for duplicate eligibility documentation is made within one year of the applicant's eligibility date.

C. If there is a need for any further information from an applicant at any stage of the process, the BCU shall request the information in writing from the applicant. If the BCU does not receive the requested information within fifteen calendar days of the date of the request, the BCU shall deny the application and send a notice of background check denial.

D. Any person who knowingly makes a materially false statement in connection with these requirements will be denied eligibility.
[8.8.3.10 NMAC - Rp, 8.8.3.10 NMAC, 10/1/2016, A, 10/1/2019; A, 7/14/2020]

ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.50 NMAC, Sections 6, 10, 12 and 15 effective 7/14/2020.

5.5.50.6 OBJECTIVE:

The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees themselves.

A. Company eligibility: Companies that increase the economic base of New Mexico are eligible to be considered for JTIP funds. They are broken out into two broad categories: manufacturers and companies that provide services that are non-retail in nature and export at least fifty percent of the services to a customer base outside New Mexico. The company must be creating new jobs as a result of expansion, startup, or relocation to the State of New Mexico. Companies that have been

funded previously by JTIP must have at least as many total employees as when they last expanded under JTIP.

B. Job eligibility:

Jobs eligible for funding through JTIP must be newly created, full-time (minimum of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions must directly support the primary mission of the business and include those directly related to the creation of the product or service provided by the company to its customers. Other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to twenty percent of the total number of jobs applied for in the proposal. [~~Rural companies~~] Companies with fewer than 20 employees may include production-related jobs claimed on previous JTIP projects in the calculation when applying for non-production jobs on subsequent applications within two years of the most recent board approval date. Jobs must also meet a wage requirement to be eligible for funding. The entry level wage requirements for JTIP eligibility are specified in the [~~chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC.~~] "Reimbursable Expenses" section of this policy manual. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit, and utilize the WorkKeys® program as part of the hiring process. In urban areas, companies [~~that apply for~~] with more than 20 [positions] employees must offer health insurance coverage to employees and their dependents and pay at least fifty percent of the premium for employees who elect coverage.

C. Trainee eligibility:

To be eligible for JTIP, trainees must be new hires to the company, must have been residents of the state of New Mexico for at least one continuous year at any time prior to employment in an eligible position, must be domiciled in New Mexico

(domicile is your permanent home; it is a place to which a person returns after a temporary absence) during employment, and must be of legal status for employment. Trainees must not have left a public school program in the three months prior to employment, unless they graduated or completed a HSE (high-school equivalency). The one-year residency requirement may not apply to a trainee hired into an approved high-wage position provided the trainee meets all other JTIP eligibility requirements and moved to New Mexico with the intent of making New Mexico his/her permanent place of residence prior to beginning work with the participating company. Companies are reimbursed at a reduced, flat reimbursement rate for trainees that meet these criteria.

D. Reimbursable training costs: Training funded through JTIP can be custom classroom training at a New Mexico post-secondary public educational institution, structured on-the-job training at the company (OJT), or a combination of the two. Training should be customized to the specific needs of the company and provide "quick response" training for employees.

(1) The following expenses are eligible for reimbursement through JTIP:

(a)

A portion of trainee wages up to seventy-five percent for up to six months of initial training.

(b)

A portion of the cost of providing customized classroom training at a New Mexico post-secondary public educational institution.

(2) Positions

that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be eligible for an additional five percent wage reimbursement above the standard rates if the approved entry wage is at least the minimum rate for the job zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC.

~~(3) Companies~~

~~that utilize the WorkKeys® program as part of their hiring process may be eligible for an additional five percent wage reimbursement above the standard rates.]~~

~~(4)~~ (3) Companies that hire trainees who have graduated within the past twelve months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional five percent wage reimbursement above the standard rates.

~~(5)~~ (4) Companies that hire trainees who are U.S. veterans may be eligible for an additional five percent wage reimbursement above the standard rates.

(5) Companies that hire trainees who have graduated out of the NM Foster Care System may be eligible for an additional five percent reimbursement above the standard rates.

(6) Companies may combine the additional five percent wage reimbursement for high-wage jobs with any one of the conditions described in Paragraphs (3), (4) or (5) above, for a total additional wage reimbursement not to exceed ten percent above the standard rates.

(7) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed one hundred percent.

E. Program management and administration: General management of the job training incentive program is the responsibility of the industrial training board as prescribed by governing legislation (Section 21-19-7, NMSA 1978 and subsequent amendments). The board is responsible for establishing policies and guidelines related to the program's management and operation. The board shall provide review and oversight to assure that funds expended will generate business activity and give measurable growth to the economic base of New Mexico throughout the

year. The board has the authority to make funding decisions based on the availability of funds, sufficient appropriations, and the board's determination of the qualifications of the business. The board may elect to implement measures to conserve funds when available funds become limited.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 6/26/2018; A, 7/14/2020]

5.5.50.10 REIMBURSABLE EXPENSES:

A. The following expenses may be eligible for reimbursement through JTIP
(1) A percentage of trainee wages for up to six months of initial training.

(2) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution at a maximum of \$35 per hour of training per trainee and a cap of \$1,000 per employee.

(3) A percentage of intern wages for up to 640 training hours.

B. Standard reimbursement rates for wages range up to seventy-five percent. Positions that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be also eligible for an additional five percent wage reimbursement. Positions filled by trainees who meet any of the three following criteria may be eligible for an additional five percent wage reimbursement above the standard rates if the approved entry wage is at least the minimum rate for the Job Zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4:

(1) Trainee has ~~[taken the WorkKeys® assessments as part of the hiring/recruitment process.]~~ graduated out of the New Mexico Foster Care System.

(2) Trainee has graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education.

(3) Trainee is a U.S. veteran. Companies may combine any one of the three conditions above with the additional five percent wage reimbursement for high-wage positions, for a total additional wage reimbursement not to exceed ten percent above the standard rates. If a company is participating in other job reimbursement training programs such as the Workforce Innovation and Opportunity Act (WIOA), the combined reimbursement to the company may not exceed one hundred percent.

C. The job training incentive program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

D. Wage reimbursement:
(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of standard reimbursement ranges up to seventy-five percent, depending on the business location.

(2) The number of hours eligible for reimbursement varies by position, up to 1,040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O*NET (occupational information network) job zone classification for the O*NET position which most closely matches the company's job description and the wage paid the trainee at the point of hire. The O*NET system, sponsored by the US department of labor, is available at <http://onetonline.org>. Each job in the O*NET system is assigned to one of five job zones, with recommended training hours for each zone. ~~[The number of recommended hours]~~ For fiscal year 2019 (July 1,

2018 – June 30, 2019) and fiscal year 2020 July 1, 2019 –June 30, 2020 [is-included] are outlined in the table below. For fiscal years 2021-2024, the JTIP board may uphold the FY2019 wage requirements beyond fiscal year 2019 under the following circumstances: 1) For companies that have engaged with the Economic Development Department through a Local Economic Development Act (LEDA) agreement prior to December, 2019-for the length of the job ramp within the Project Participation Agreement (PPA) [contract period], provided the company meets job creation requirements within that period and wages do not fall below the statewide minimum wage. 2) For companies that have engaged with the Economic Development Department prior to December, 2019 for consideration of business expansion or location and have been presented with a written incentive analysis based on the FY2019 wage requirements. JTIP applications must be submitted for consideration no later than November 13, 2020. [FY2019 wage requirements may be upheld for the length of the LEDA PPA contract period provided the company meets job creation requirements within that period and wages do not fall below the statewide minimum wage.]

General Guideline for Duration of Reimbursable Training Time/Wages for FY2019 and FY2020							
Job Zone	Definitions	SVP Range/ Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	11.00	9.50	40	8
2a	Some preparation needed	4.0 to < 6.0	480	12.50	10.00	60	12
2	Some preparation needed	4.0 to < 6.0	640	14.00	10.50	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	15.50	12.00	100	20
3	Medium preparation needed	6.0 to < 7.0	960	17.00	13.00	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	20.00	14.00	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

The number of recommended hours for fiscal years 2021, 2022, 2023 and 2024 are outlined in the tables below.

General Guideline for Duration of Reimbursable Training Time/Wages for FY2021 (July 1, 2020-June 30, 2021)							
Job Zone	Definitions	SVP Range/ Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	12.50	10.63	40	8
2a	Some preparation needed	4.0 to < 6.0	480	14.00	11.13	60	12
2	Some preparation needed	4.0 to < 6.0	640	15.50	11.63	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	17.00	13.13	100	20
3	Medium preparation needed	6.0 to < 7.0	960	18.50	14.13	120	24

4	Considerable preparation needed	7.0 to < 8.0	1,040	21.50	15.13	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

General Guideline for Duration of Reimbursable Training Time/Wages for FY2022 (July 1, 2021-June 30, 2022)

Job Zone	Definitions	SVP Range/ Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	14.00	11.90	40	8
2a	Some preparation needed	4.0 to < 6.0	480	15.50	12.40	60	12
2	Some preparation needed	4.0 to < 6.0	640	17.00	12.90	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	18.50	14.40	100	20
3	Medium preparation needed	6.0 to < 7.0	960	20.00	15.40	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	23.00	16.40	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

General Guideline for Duration of Reimbursable Training Time/Wages for FY2023 (July 1, 2022-June 30, 2023)

Job Zone	Definitions	SVP Range/ Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	15.00	12.75	40	8
2a	Some preparation needed	4.0 to < 6.0	480	16.50	13.25	60	12
2	Some preparation needed	4.0 to < 6.0	640	18.00	13.75	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	19.50	15.25	100	20
3	Medium preparation needed	6.0 to < 7.0	960	21.00	16.68	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	24.00	17.68	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

General Guideline for Duration of Reimbursable Training Time/Wages for FY2024 (July 1, 2023-June 30, 2024)							
Job Zone	Definitions	SVP Range/ Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	15.50	13.18	40	8
2a	Some preparation needed	4.0 to < 6.0	480	17.00	13.68	60	12
2	Some preparation needed	4.0 to < 6.0	640	18.50	14.18	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	20.00	15.68	100	20
3	Medium preparation needed	6.0 to < 7.0	960	21.50	16.68	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	24.50	17.68	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

(3) The JTIP staff will ensure that the O*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O*NET guideline. The board will also review the company's educational and experience requirements of the applicants to determine the degree of match with the company's job descriptions. The JTIP board may award training hours based on the O*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the tables above. If a company establishes a wage range which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O*NET recommended hours as per criteria and procedures set forth by and at the discretion of the JTIP board, which may include consideration of the company benefits package. Generally, the hours are reduced to the hours allowed for the next lower job zone. The reimbursement percentages may be adjusted at the discretion of the board based on availability of funds or sufficient appropriations.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural, frontier, economically distressed, and Native American land.

(a) Companies located in urban areas (cities with population above 60,000 in the most recent federal decennial census) and Class H counties (i.e., Los Alamos) are reimbursed at up to fifty percent for all eligible training hours. Urban communities are: Albuquerque (545,852), Las Cruces (97,618), Rio Rancho (87,521), and Santa Fe (67,947).

(b) Companies located in rural areas, outside those listed above are reimbursed at up to sixty-five percent for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at up to seventy-five percent for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to seventy-five percent reimbursement. To receive up to seventy-five percent reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

(e) Companies located on Native American reservations are eligible for up to seventy-five percent reimbursement.

(f) Companies located in federally designated colonias in New Mexico are eligible for up to seventy-five percent reimbursement for all eligible training hours.

(6) JTIP eligible positions with starting wages eligible for the high wage job tax credit may be eligible for an additional five percent reimbursement. These requirements are a hiring salary of \$60,000 or higher in an urban or class H county and a hiring salary of \$40,000 or higher in a rural location or economically disadvantaged area. Trainee requirements are still factors for JTIP eligibility. The percentage of wages reimbursed for high-wage positions filled by trainees who do not meet the one-year residency requirement is unique and not subject to any additional wage reimbursement above the standard rate. Companies located in urban areas and Class H counties are reimbursed up to thirty percent for all eligible training hours. Companies located in rural areas are reimbursed up to forty percent for all eligible training hours. Companies located in frontier areas are reimbursed up to fifty percent for all eligible training hours.

~~**(7)** — Companies that utilize the WorkKeys® program as part of their hiring process may be eligible for an additional five percent reimbursement.~~

~~**(8)** **(7)** JTIP eligible positions filled by trainees who have graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional five percent reimbursement.~~

~~**(9)** **(8)** JTIP eligible positions filled by U.S. veterans may be eligible for an additional five percent reimbursement.~~

(9) Trainee has graduated out of the NM Foster Care System may be eligible for an additional five percent reimbursement. This provision is effective for fiscal years 2021 and 2022 and will be reassessed as part of the annual policy amendment process for FY2023.

(10) Additional guidelines for wage reimbursement:

(a) Eligible trainee hours shall not exceed 1,040 hours per trainee (six months) based on the company’s scheduled workweek, not to exceed 40 hours per week.

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime, commission and stock options are not eligible for reimbursement.

(c) If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d) Any training hours that exceed the contracted amount are the responsibility of the company.

(e) If a company is participating in other job reimbursement training programs such as WIOA, the combined reimbursement to the company may not exceed one hundred percent.

(f) Additional wage reimbursement may not exceed ten percent above the standard rates. Companies may combine the additional five percent wage reimbursement for high-wage jobs with one of the three following conditions for an additional five percent wage reimbursement provided the entry wage is at least the minimum rate for the Job Zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4: 1) the trainee has taken the WorkKeys® assessments as part of the hiring process the trainee has graduated out of the New Mexico Foster Care System; 2) the trainee has graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education; 3) the trainee is a U.S. veteran. High-wage positions filled by trainees who do not meet the one-year residency requirement are not eligible for additional wage reimbursement above

the standard rate.

E. Reimbursement for custom classroom training:

Payment for custom classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is at a maximum of \$35 per hour per trainee with a cap of \$1,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. No training equipment may be purchased or rented using JTIP funds. [5.5.50.10 NMAC - Rp, 5.5.50.10 NMAC, 6/26/2018; A, 1/1/2020; A, 7/14/2020]

5.5.50.12 PROCEDURAL OVERVIEW: The procedures for completing a funding proposal and the administration of a project are explained in detail in the JTIP online application and proposal guide and the JTIP policy and procedures manual.

A. Proposals and contract amendments must be submitted to the economic development department, JTIP, no less than four weeks before the JTIP board meeting at which the proposal will be considered for funding.

B. The contract start date is the date of the board meeting at which funding was approved.

C. Eligible job openings must be registered with the New Mexico workforce connection.

D. The company must hire trainees within six months of the contract start date.

E. The company must submit an online hiring report at the end of the six month hiring period.

F. Claims for reimbursement should be submitted as trainees complete training.

G. Each project is subject to compliance reviews throughout the term of the contract.

H. The company must arrange for an agreed upon procedure in accordance with generally accepted standards and the general requirements included in the statements on standards for attestation engagements, as issued by the American institute of certified public accountants upon completion of the training.

I. The final claim for reimbursement should be submitted with the completed agreed upon procedures report.

J. Yearly follow-ups may be conducted to show effectiveness of the program, including surveys to address company retention, wage rates of program trainees and business and industry needs for industry recognized certifications and credentials by the economic development department, the department of workforce solutions and the public education department.

K. Companies that fail to comply with all established operating requirements, closeout procedures, and follow-up studies are not eligible to apply for future participation in JTIP.

L. Companies that are not in good standing with other Economic Development Department programs may not be eligible for JTIP.

M. EDD and JTIP are taking steps to address setbacks that JTIP companies may encounter due to the COVID-19 health emergency. The board has elected to adopt the following procedural adjustments through FY2021 in order to support companies during this time and into recovery.

(1) JTIP companies that are still within the 6-month hiring period and have suspended their hiring plans, may be allowed to extend the hiring period and therefore the project period, by the length of time the Governor's order was in effect. If the company deems it necessary to postpone hiring for a longer period, JTIP staff will work with the company on a re-application at the appropriate time.

(2) If a JTIP company has to temporarily reduce

hours of operation during the time the Governor's order was in place, part-time hours worked by JTIP trainees may be eligible for reimbursement.

(3) If a JTIP company allows trainees to telework, the hours worked may be counted toward the JTIP training hours.

(4) For FY2021, the expansion requirement for all companies will be that the headcount at the time of application is at least at or above the two-year average headcount.

[5.5.50.12 NMAC - Rp, 5.5.50.12 NMAC, 6/26/2018; A, 7/14/2020]

5.5.50.15 GLOSSARY:

A. Apprentice: Individual who has participated in a work-based training program through the NM department of workforce solutions with the JTIP company.

~~[A-]~~ **B. Agriculture (traditional)/mining/extractive industries:** Companies classified in agriculture, mining, and extractive by the North American industry classification system (NAICS) are not eligible for JTIP.

~~[B-]~~ **C. Company:** A company is a corporation, or less commonly, an association partnership or union that carries on a commercial or industrial enterprise. Generally, a company may be a corporation, partnership, association, joint-stock company, or organized group of persons, whether incorporated or not, and (in an official capacity), legally recognized organizational entity designed to provide goods or services to consumers or corporate entities such as governments, charities, or other businesses.

~~[C-]~~ **D. Distribution:** A distributor is the middleman between the manufacturer and the retailers. After a product is manufactured, it may be warehoused or shipped to the next echelon in the supply chain, typically either a distributor, retailer or customer.

~~[D-]~~ **E. Economically distressed areas:** Companies located in an economically distressed area in New Mexico are eligible for seventy-five percent reimbursement.

To receive a seventy-five percent reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

~~[E-]~~ **F. Expanding company:** An expanding company is an existing business which requires additional employees or workforce due to a market or product expansion. A company which buys out an existing company is not considered a new company. Eligibility as an expanding company is determined by average employment over the two prior years. (Refer to "peak employment.")

~~[F-]~~ **G. Film and multimedia post production:** Film digital production and post-production companies are considered manufacturing provided the company operates year round and is primarily engaged in any of the following: animation, editing, foley recording, automatic dialogue replacement, sound editing, special effects (including computer generated imagery or other effects), scoring, and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. Production jobs must be full-time and qualifying trainees must be employed year round. Position must not require trainee to complete product on filming location. Trainee may not be directly employed by the client company at any time.

~~[G-]~~ **H. Frontier:** A frontier area is any community with a population of less than 15,000 based on the most recent decennial census and outside a designated MSA.

~~[H-]~~ **I. Green industries:** Those that exist for the sole purpose of contributing directly to preserving

or enhancing environmental quality by reducing waste and pollution or by producing sustainable products using sustainable processes and materials. Green industries may include: energy system retrofits to increase energy efficiency and conservation; production and distribution of biofuels and vehicle retrofits for biofuels; building design and construction that meet the equivalent of best available technology in energy and environmental design standards; organic and community food production; manufacture of products from non-toxic, environmentally certified or recycled materials; manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells; solar technology installation and maintenance; recycling, green composting and large-scale reuse of construction and demolition materials and debris; and water system retrofits to increase water efficiency and conservation.

[H:] J. High wage job tax credit: The high wage job tax credit provides a tax credit of ten percent of the wages and benefits paid for each new economic-based job created on or after July 1, 2015, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$40,000 per year in a community with a population of less than 60,000 and \$60,000 per year in a community with a population of 60,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee.

[H:] K. Manufacturing: Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production in which raw materials are transformed into finished goods on a large scale is one example. Assembly and installation on the premises of the customer is not included as manufacturing. Manufacturing businesses are typically included in Sectors 31-33 of NAICS. Manufacturing is defined at Section 7-4-10D NMSA 1978 as "combining or processing components or materials to increase their value

for sale in the ordinary course of business but does not include: (1) construction; (2) farming; (3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or (4) processing natural resources, including hydrocarbons."

[K:] L. NAICS: North American industry classification system (NAICS) is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. This comprehensive system covers the entire field of economic activities, producing and non-producing. The NAICS system replaced the standard industrial classification (SIC) system. NAICS information is available at www.census.gov/cgi-bin/sssd/naics/naicsrch.

[H:] M. Native American crafts: Contracts may be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts only when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

[M:] N. New company: A new company is defined as a company not currently in operation in the state which shows evidence of intent to establish operations in New Mexico. The company must have a New Mexico tax ID when applying for JTIP funds.

[N:] O. Non-retail service sector business: To be considered

for JTIP funding, the company must provide services which are not retail in nature and must export fifty percent of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies provide a specialized service that may be sold to another business and used by the business to develop products or deliver services. Non-retail service is not offered to the general public and is provided to customers who are not physically present at the New Mexico facility. Non-retail service businesses which meet the JTIP criteria for green industry are exceptions to the requirement that at least fifty percent of the customer base be located outside New Mexico.

[O:] P. O*NET: The occupational information network - O*NET database takes the place of the dictionary of occupational titles (DOT) as the nation's primary source of occupational information. The number of training hours for which a position is eligible for reimbursement through JTIP is based on the number of hours recommended for the position in O*NET. The O*NET database is available at <http://onetonline.org>.

[P:] Q. Peak employment: First time JTIP applicants: Peak employment will be based on the employment average from two previous years or the present employment level, whichever is higher. The board will utilize the state of New Mexico unemployment insurance (UI) reports to determine peak employment at the time of application to ensure an expansion is indeed occurring.

[O:] R. Peak employment: Previous JTIP participants: Peak employment for previous participants will be based on the employment level at the time of the award of the last JTIP contract plus the number of employees funded through that contract. In cases in which a number of years have passed since prior funding, the board may utilize the state of New Mexico unemployment insurance (UI) report for the last two years to determine peak employment

at the time of reapplication to ensure an expansion is indeed occurring.

[R:] S. Retail trade:

Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise, such as installation. Retailers may operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers, or use other forms of sales techniques, including the sale of goods through the internet, online catalogs, portable stalls, and infomercials. Retail trade is usually the final step in the production and distribution of goods and usually sells small amounts of a product to individuals.

[S:] T. Renewable energy:

is a source of power generated from resources which are naturally replenished, including but not limited to electricity or heat derived from solar, wind, tidal power, hydropower, biomass, geothermal resources and biofuels or hydrogen produced from renewable resources.

[F:] U. Southwestern arts and crafts: Refer to department of interior Indian arts and crafts board; Indian arts and crafts association; council of better business bureau; federal trade commission.

[U:] V. Transloading services: The process of transferring a shipment from one mode of transportation to another in order to have goods reach their final destination. It is most commonly employed when it is physically impossible or is not economically efficient to transport goods to a final destination using only one mode of transportation. Companies that ship goods internationally are likely to use multiple methods of transport, especially if both the shipping point and the destination are located inland.

[V:] W. Urban

communities: An urban community is defined as a municipality with a population of sixty thousand or more according to the most recent federal decennial census. Those communities are: Albuquerque (545,852), Las Cruces (97,618), Rio Rancho (87,521), and Santa Fe (67,947).

Class H counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

[W:] X. Metropolitan statistical area: An MSA is a statistical standard designated and defined by the U.S. department of commerce, office of federal statistical policy and standards (OFSPS). MSA's are designated so that governmental agencies will use a common geographical classification in the production of data on metropolitan areas in the nation. The general concept of an MSA is one of a large population nucleus, together with any adjacent communities which have a high degree of economic and social integration with that nucleus. In New Mexico there are four MSA's. Albuquerque MSA includes Bernalillo, Sandoval, Valencia, and Tarrant counties. Santa Fe MSA includes Santa Fe county. Las Cruces MSA includes Dona Ana county and Farmington MSA includes San Juan county.

[X:] Y. Rural: Any area located outside communities defined as urban in the JTIP policy.

[Y:] Z. Veteran: A New Mexico resident who is registered with the New Mexico workforce connection, and who served in the active military, naval or air service and who was discharged or released under conditions other than dishonorable.

[Z:] AA. Intern: A student or recent graduate (within one year) of an academic or training program who works at a trade or occupation in order to gain work experience. [5.5.50.15 NMAC - Rp, 5.5.50.15 NMAC, 6/26/2018; A, 7/14/2020]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.2 NMAC, Sections 9, 11 and 12, effective 7/14/2020.

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, retired members [~~working in the return to work program~~] who have returned to work under 2.82.5.15 NMAC, [~~retired members working full time equivalency ("FTE") .25 FTE or less under~~] 2.82.5.16 NMAC, or 2.82.5.17 NMAC, participants in the alternative retirement plan (ARP) or employees excluded under 2.82.2.11 NMAC.

B. Any member except retired members [~~working in the return to work program~~] who have returned to work under 2.82.5.15 NMAC, [~~retired members working .25 FTE or less under~~] 2.82.5.16 NMAC, or 2.82.5.17 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 ~~[working in the return to work program] who have returned to work~~ under 2.82.5.15 NMAC, ~~[retired members working .25 FTE or less under]~~ 2.82.5.16 NMAC, or 2.82.5.17 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 ~~[working in the return to work program] who have returned to work~~ under 2.82.5.15 NMAC, ~~[retired members working .25 FTE or less under]~~ 2.82.5.16 NMAC, or 2.82.5.17 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; A, 7/14/2020]

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] C.~~ 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] D. 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; A, 7/14/2020]

2.82.2.12 RETIRED MEMBERS: For the purposes of [the return to work program,] 2.82.5.15 NMAC, 2.82.5.16 NMAC and 2.82.5.17 NMAC, a retired member shall be defined as any member who has retired pursuant to the Educational Retirement Act. [2.82.2.12 NMAC - Rp, 2.82.2.12 NMAC, 10/31/2017; A, 7/14/2020]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.4 NMAC, Section 11, effective 7/14/2020.

2.82.4.11 SICK LEAVE SERVICE CREDIT:

A. Beginning July 1,

2020, a member may pay to convert unused sick leave to earned service credit in accordance with Section 22-11-34.1 NMSA 1978. Earned service credit that is purchased in accordance with Section 22-11-34.1 NMSA 1978 shall be known as "sick leave service credit." To purchase sick leave service credit a member shall:

(1) submit an application on a form provided by the director specifying the number of days of unused sick leave the member desires to use to purchase earned service credit;

(2) be currently employed by a local administrative unit (LAU) as a regular member as defined under the Educational Retirement Act;

(3) pay to the fund the actuarial present value, as determined by the board, of the benefit attributable to the conversion; and

(4) have acquired at least five years of contributory employment to be eligible for retirement.

B. The member shall make full payment in a single lump sum within 90 calendar days of the date that the member is informed of the amount of the payment.

C. The board may accept rollovers or transfers for the purchase of sick leave 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 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) The board may not accept rollovers or transfers in excess of the amount required to purchase sick leave service credit.

(4) 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.

(5) 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.

(6) The rollovers and transfers shall contain only pre-tax deferred contributions and earnings on the contributions. The member 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.

D. Any sick leave for which the member has been paid or which the member has otherwise used shall not be eligible for conversion to sick leave service credit.

E. The member shall only be eligible to convert his or her own earned sick leave to earned service credit. Donated sick leave or sick leave available to the member from a sick leave bank or similar repository shall not be eligible for conversion to sick leave service credit.

F. The LAU employing the member shall certify to ERB:

(1) the number of days of unused sick leave the member has available for conversion, and

(2) the number of days of unused sick leave the member wishes to convert to sick leave service credit.

G. The director shall review the member's application

for sick leave service credit and the information certified by the LAU. The director may request additional documentation or information from the LAU or the member that may be relevant to the processing of the application.

H. Unused sick leave that is converted to earned service credit shall be cancelled by the LAU and shall no longer be available to the member for use as sick leave or as a basis for monetary payment.

I. If a member receives a refund of the member's contributions, all sick leave service credit shall be cancelled from the member's account and shall not be available for purchase or be reinstated.

J. Conversion of unused sick leave to earned service credit is irrevocable. Sick leave service credit shall not convert back into or become unused sick leave.

K. Payments received by ERB for the purchase of sick leave service credit are nonrefundable.

L. A retired member who has not suspended their benefit and who has returned to employment with an LAU is not eligible to purchase sick leave service credit. Sick leave earned by a retired member who has not suspended their benefit and who has returned to employment with an LAU shall not be eligible for conversion to sick leave service credit.

[2.82.4.11 NMAC - N, 7/14/2020]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.5 NMAC, Sections 8, 10, 12, and 15 through 21, effective 7/14/2020.

2.82.5.8 ELIGIBILITY:

A. A member shall not be considered eligible to retire unless he shall have completed at least five years of contributory employment even though such member might otherwise be eligible by reason of age and service, and tender of payment for contributory employment.

B. A school bus owner-driver shall not be eligible to retire unless [he/she] the owner-driver terminates the owner-driver contract with the public schools. [6/30/1999; 2.82.5.8 NMAC - Rn, 2 NMAC 82.5.8, 11/30/2001; A, 10/17/2017; A, 7/14/2020]

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] the member shall not be entitled to retirement benefits for the

months of July or August if [he] the member 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] the member 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] the member's service credit, and [he] the member 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 or 2.82.5.17 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), 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] the member's 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 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 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 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 the member's total service is under 25 years, 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 the member's re-retirement benefit be less than the member was receiving when 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; A, 7/14/2020]

2.82.5.12 APPROVAL OF RETIREMENT APPLICATION:

The director [~~of educational retirement~~] is authorized to approve duly executed applications for age and service retirement on behalf of the board in order to insure timely approval of same; however, all such approvals must be ratified by the educational retirement board at a subsequent meeting of the board. [6/30/1999; 2.82.5.12 NMAC - Rn, 2 NMAC 82.5.12, 11/30/2001; A, 7/14/2020]

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 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 12 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. To satisfy the provisions of Subsection 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 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. A retired member is not eligible for the return to work program until the member submits a completed and signed [~~and notarized~~] return to work 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 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. A member who qualifies under Subsection B of Section 22-11-25.1 NMSA 1978 may begin full time employment immediately after ERB approval [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; A, 7/14/2020]

2.82.5.16 RETURN TO WORK .25 FTE OR LESS:

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~~] or 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; A, 7/14/2020]

2.82.5.17 RETURN TO WORK LESS THAN \$15,000 PER YEAR:

A. A retired member may return to employment (includes “substitution”) pursuant to Subsection H of Section 22-11-25.1 NMSA 1978 without affecting the retired member’s retirement benefit provided that:

- (1) the retired member has not rendered service to a local administrative unit (LAU) for at least 90 consecutive days after the date of retirement;
- (2) prior to the date of retirement or within 90 days after the date of retirement, the retired member did not enter into a formal or informal agreement with a LAU or a contractor providing services to a LAU to return to employment;
- (3) the retired member earns less than fifteen thousand (\$15,000) per fiscal year; and
- (4) The retired member submits a return to work application and is approved by ERB prior to commencing employment.

B. If a retired member earns \$15,000 or more per fiscal year, the retired member’s retirement benefit shall be suspended for the duration of the employment and the retired member shall be returned to active status effective the first day of the month following the month in which the retired member has earnings in excess of the above limit. 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 set by the board.

[2.82.5.17 NMAC - N, 7/14/2020]

[2.82.5.17 NMAC - N, 7/14/2020]

[2.82.5.17] 2.82.5.18 TERMINATION OF PLAN; ACCRUED RIGHTS OF MEMBERS:

The rights of members to benefits accrued, to the extent funded, will become vested to the extent required by and upon the events set forth in Treas. Reg. Section 1.401-6(a)(1). See 26 CFR 1.401-6.

[2.82.5.18 NMAC – Rn, 2.82.5.17 NMAC, 7/14/2020]

[2.82.5.18] 2.82.5.19**INTERNAL REVENUE CODE**

SELECTION: The Educational Retirement Act of New Mexico is intended to satisfy Section 401(a) of the Internal Revenue Code and to be a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code.

[2.82.5.19 NMAC - Rn, 2.82.5.18 NMAC, 7/14/2020]

[2.82.5.19] 2.82.5.20**ROLLOVER DISTRIBUTIONS FOR NON-SPOUSE**

BENEFICIARIES: The Educational Retirement Act shall allow direct rollovers to non-spouse beneficiaries for lump sum distributions only, and such distributions must be requested before the end of the year after the year of the member's death. No partial rollovers shall be permitted. A direct rollover by a non-spouse beneficiary must be made into a traditional or Roth IRA established on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account (IRA) pursuant to the provisions of Section 402(c) (11) of the Internal Revenue Code. The distribution must also otherwise satisfy the definition of an "eligible rollover distribution" under Section 401(a) (31) of the Internal Revenue Code. All other current rules applicable to rollover distributions under the Educational Retirement Act, or adopted by the board pursuant to the Educational Retirement Act, must be followed. The non-spouse beneficiary shall be notified that he or she is responsible for following the applicable minimum required distribution rules under Section 401(a) (9) of the Internal Revenue Code.

[2.82.5.20 NMAC - Rn, 2.82.5.19, 7/14/2020]

[2.82.5.20] 2.82.5.21**DEATH BENEFITS WHILE PERFORMING MILITARY**

SERVICE: In the case of a death or disability occurring on or after January 1, 2007, if a [participant] member dies while performing qualified military service (as defined

in section 414(u)), the survivors of the [participant] member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service not otherwise credited under the terms of the Educational Retirement Act) provided under the plan as if the [participant] member had resumed and terminated employment on account of death.

[2.82.5.21 NMAC - Rn & A, 2.82.5.20, 7/14/2020]

EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.7 NMAC, Section 9, effective 7/14/2020.

2.82.7.9 EMPLOYMENT:

A. Once each calendar quarter, administrative units shall be required to report to the educational retirement board "the full-time equivalency" of members retired for age or service and members receiving disability benefits.

B. A member receiving disability benefits may engage in employment in the same manner and such employment shall be considered as partial evidence of ability to return to regular employment, and this, together with medical evidence, may be considered by the board in determining whether the member's disability benefit should continue.

C. Members retired for age or service may reside anywhere they choose, and engage in any employment which is not covered by the Educational Retirement Act, without affect to their retirement status.

D. If a member who returns to employment and is removed from a retirement status wishes to retire again, [he] the member may do so in accordance with Section 22-11-25 NMSA 1978 and Subsection D of 2.82.5.9 NMAC.

E. Retired members who perform services for local administrative units as an independent contractor must meet the criteria set

forth for an independent contractor in Subsection [D] C of 2.82.2.11 NMAC.

[2.82.7.9 NMAC - Rp, 2 NMAC 82.7.9, 6/16/2015; A, 10/17/2017; A, 7/14/2020]

PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department approved at its 5/19/2020 hearing, to repeal its rule 6.31.2 NMAC, Children with Disabilities/Gifted Children, filed 6/29/2007 and replace it with 6.31.2 NMAC, Children with Disabilities/Gifted Children, adopted on 7/1/2020 and effective 7/14/2020.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS PART 17 STRUCTURED LITERACY INSTRUCTION, INTERVENTIONS, AND PROFESSIONAL DEVELOPMENT

6.30.17.1 ISSUING AGENCY: Public Education Department, hereinafter the department.

[6.30.17.1 NMAC – N, 7/14/2020]

6.30.17.2 SCOPE: This rule applies to all school districts and state-chartered charter schools.

[6.30.17.2 NMAC – N, 7/14/2020]

6.30.17.3 STATUTORY AUTHORITY: Sections 9-24-8, 22-2-2, and 22-13-32 NMSA 1978.

[6.30.17.3 NMAC – N, 7/14/2020]

6.30.17.4 DURATION: Permanent.

[6.30.17.4 NMAC – N, 7/14/2020]

6.30.17.5 EFFECTIVE DATE: July 14, 2020, unless a later

date is cited at the end of a section.
[6.30.17.5 NMAC – N, 7/14/2020]

6.30.17.6 OBJECTIVE:

This rule provides criteria for improving literacy outcomes for all students through the development and implementation of structured literacy instruction and structured literacy interventions for students displaying difficulties in reading or characteristics of dyslexia, leading to a higher number of students achieving reading proficiency.

[6.30.17.6 NMAC – N, 7/14/2020]

6.30.17.7 DEFINITIONS:

A. “Department-approved screener” means a tool, approved by the department, used to identify characteristics of dyslexia.

B. “First standardized reporting date” means the 40th day count, or the second Wednesday of October.

C. “Licensed and accredited or credentialed teacher preparation provider” means a licensed and accredited professional development provider who specializes in providing evidence-based training in structured literacy.

D. “Multi-layered system of supports” means a coordinated and comprehensive framework that uses increasingly intensive evidence-based academic and behavioral supports that address student needs as evidenced by student data.

E. “Student assistance team” or “SAT” means the student assistance team, which is a school-based group of people whose purpose is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general education.

F. “Structured literacy” means systematic, cumulative, explicit, diagnostic, and multisensory instruction that includes deep content knowledge and specific teaching expertise that focuses on the elements of phonological awareness, word recognition, phonics and decoding, spelling, and syntax at the

sentence and paragraph levels for the prevention of reading deficits.

[6.30.17.7 NMAC – N, 7/14/2020]

6.30.17.8 PARENT OR LEGAL GUARDIAN

NOTIFICATION: At the beginning of a school year, school districts and charter schools shall notify parents or legal guardians that entering first grade students shall be screened for characteristics of dyslexia. If a student is determined to display characteristics of dyslexia per the department-approved screener, school districts and charter schools shall notify parents of the results of the screening and the structured literacy interventions that are taking place in response to the results. School districts and charter schools shall decide the method by which to inform parents or legal guardians of the results and interventions.

[6.30.17.8 NMAC – N, 7/14/2020]

6.30.17.9 REQUIREMENTS FOR SCREENING, EVALUATION, AND INTERVENTION:

A. Using a department-approved screener, elementary schools shall screen all entering first grade students, in accordance with PED guidance, for dyslexia by the first standardized reporting date.

B. A student whose screening demonstrates characteristics of dyslexia shall receive targeted structured literacy interventions with progress monitoring to determine if the student is making adequate progress, pursuant to Section 22-13-32 NMSA 1978, or be referred to a student assistance team.

C. Consideration shall be given to ensure the student is not demonstrating characteristics of dyslexia solely due to a lack of appropriate English language program or services.

D. Pursuant to Section 22-13-32 NMSA 1978, if a student does not make adequate progress with targeted structured literacy interventions, a school shall convene a student assistance team to prescribe more frequent and intensive structured

literacy interventions with progress monitoring to determine the student’s level of progress. The structured literacy interventions prescribed by the student assistance team shall be in accordance with the department’s multi-layered system of supports.

E. At no time should a student identified as demonstrating characteristics of dyslexia stop receiving targeted structured literacy interventions.

F. Pursuant to Section 22-13-32 NMSA 1978, a parent or legal guardian of a student referred to a student assistance team shall be informed of the parent’s right to request an initial special education evaluation at any time. If the school district or charter school agrees that the student may have a disability, the student assistance team shall refer the child for an evaluation without undue delay, and, shall document attempts at obtaining informed consent from the student’s parent(s) or legal guardian(s). The student shall be evaluated within 60 days of receiving the parental consent for an initial evaluation. If the school district or charter school refuses the parent’s request for an initial evaluation, the school district or charter school shall provide written notice of the refusal to the parent, including notice of the parent’s right to challenge the school district’s or charter school’s decision as provided in state and federal law and rules.

[6.30.17.9 NMAC – N, 7/14/2020]

6.30.17.10 REQUIREMENTS FOR DOCUMENTATION:

School districts and charter schools shall submit data in accordance with PED guidance.

[6.30.17.10 NMAC – N, 7/14/2020]

6.30.17.11 REQUIREMENTS FOR PROFESSIONAL DEVELOPMENT:

A. Pursuant to Section 22-13-32 NMSA 1978, every school district and charter school shall develop and implement a literacy professional development plan that includes a detailed framework for the following:

(1) professional development in structured literacy by a licensed and accredited or credentialed teacher preparation provider for all elementary school teachers, including English language development teachers or teachers of English as a second language; and

(2) professional development in evidence-based reading interventions for reading interventionists and special education teachers working with students demonstrating characteristics of dyslexia or diagnosed with dyslexia.

B. Every school district and charter school shall provide sustained professional development for the following:

(1) school administrators and teachers who teach reading to implement appropriate structured literacy; and

(2) special education teachers to provide structured literacy for students who are identified with dyslexia as a specific learning disability and who are eligible for special education services.

C. The department shall:

(1) provide lists of recommended teacher professional development materials and opportunities for teachers and school administrators regarding structured literacy for students at risk for reading failure and displaying the characteristics of dyslexia; and

(2) provide technical assistance for special education diagnosticians and other special education professionals regarding the formal special education evaluation of students suspected of having a specific learning disability, such as dyslexia.

[6.30.17.11 NMAC – N, 7/14/2020]

**HISTORY OF 6.30.17 NMAC:
[RESERVED]**

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 31 SPECIAL EDUCATION PART 2 CHILDREN WITH DISABILITIES/GIFTED CHILDREN

6.31.2.1 ISSUING AGENCY: Public Education Department, hereinafter the department

[6.31.2.1 NMAC - Rp, 6.31.2.1 NMAC, 7/14/2020]

6.31.2.2 SCOPE: The requirements of these rules are binding on each New Mexico public agency that has direct or delegated authority to provide special education and related services, regardless of whether that public agency is receiving funds under the federal Individuals with Disabilities Education Improvement Act of 2004 and regardless of whether it provides special education and related services directly, by contract, or through other arrangements such as referrals by the public agency to private schools or facilities. Each public agency is responsible for ensuring that all rights and protections under these rules are afforded to children referred to or placed in private schools or facilities, including residential treatment centers, day treatment centers, hospitals, or mental health institutions by that public agency.

[6.31.2.2 NMAC - Rp, 6.31.2.2 NMAC, 7/14/2020]

6.31.2.3 STATUTORY AUTHORITY: This rule is being promulgated pursuant to Sections 22-2-1, 22-2-2, 22-13-5 and 22-13-6.1 NMSA 1978.

[6.31.2.3 NMAC - Rp, 6.31.2.3 NMAC, 7/14/2020]

6.31.2.4 DURATION: Permanent.

[6.31.2.4 NMAC - Rp, 6.31.2.4 NMAC, 7/14/2020]

6.31.2.5 EFFECTIVE DATE: July 1, 2020, unless a later date is specified at the end of a section.

[6.31.2.5 NMAC - Rp, 6.31.2.5 NMAC, 7/14/2020]

6.31.2.6 OBJECTIVE: The following rule is promulgated to assist New Mexico public agencies in appropriately identifying and providing educational services for children with disabilities and gifted children. The purposes of this rule are to ensure that all children with disabilities have available a free appropriate public education which includes special education and related services to meet their unique needs; to ensure that the rights of children with disabilities and gifted children and their parents are protected; to assist public agencies to provide for the education of all children with disabilities and gifted children; and to evaluate and ensure the effectiveness of efforts to educate those children.

[6.31.2.6 NMAC - Rp, 6.31.2.6 NMAC, 7/14/2020]

6.31.2.7 DEFINITIONS:

A. Terms defined by federal laws and rules. All terms defined in the following federal laws and rules and any other federally defined terms that are incorporated there by reference are incorporated here for purposes of these rules.

(1) The federal Individuals with Disabilities Education Improvement Act of 2004 (IDEA), 20 USC Sec. 1400 et seq.

(2) The IDEA rules, 34 CFR Parts 300 and 301.

(3) Pursuant to the paperwork reduction provisions of IDEA, 20 USC Sec. 1408, all definitions, with the exception of those found in Subsection B of 6.31.2.7 NMAC, contained in IDEA Parts 300 and 301 at 34 CFR Secs. 300.1 through 300.45, will be adopted by reference.

B. The following terms shall have the following meanings for purposes of these rules.

(1) **“CFR”** means the code of federal regulations, including future amendments.

(2) **“Child with a disability”** means a child who meets all requirements of 34 CFR Sec. 300.8 and:

(a) is age three through 21 or who will turn age three at any time during the school year;

(b) has been evaluated in accordance with 34 CFR Secs. 300.304 through 300.311 and any additional requirements of these or other department rules and standards and as having one or more of the disabilities specified in 34 CFR Sec. 300.8 including an intellectual disability; a hearing impairment, including deafness, speech or language impairment; a visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairment; a specific learning disability; deaf-blindness; or being developmentally delayed as defined in Paragraph (4) of Subsection B of 6.31.2.7 NMAC; and who has not received a high school diploma; and

(c) at the discretion of each local educational agency and subject to the additional requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC, may include a child age three through nine who is evaluated as being developmentally delayed and who, because of that condition, needs special education and related services.

(3) **“Developmentally delayed”** means a child age three through nine or who will turn age three at any time during the school year with documented delays in development which are at least two standard deviations below the mean on a standardized test instrument or thirty percent below chronological age and who in the professional judgment of the IEP team and one or more qualified evaluators needs special education and related services in at least one of the following areas: communication development, cognitive development, physical development, social or emotional development, or adaptive development. Use of the

developmentally delayed option by individual local educational agencies is subject to the further requirements of Paragraph (2) of Subsection F of 6.31.2.10 NMAC. Local educational agencies shall use appropriate diagnostic instruments and procedures to ensure that the child qualifies as a child with a developmental delay in accordance with the definition in this paragraph.

(4) **“Dual discrepancy”** means the child does not achieve adequately for the child’s age or to meet grade-level standards established in New Mexico standards for excellence, 6.29.1 through 6.29.17 NMAC; and

(a) does not make sufficient progress to meet age or grade-level standards; or

(b) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards, or intellectual development.

(5) **“Dyslexia”** means a condition of neurological origin that is characterized by difficulty with accurate or fluent word recognition and by poor spelling and decoding abilities, which characteristics typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction and may result in problems in reading comprehension and reduced reading experience that may impede the growth of vocabulary and background knowledge.

(6) The **“educational jurisdiction”** of a public agency includes the geographic area, age range, and all facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, juvenile justice facilities, state supported schools, or programs within which the public agency is obligated under state laws, rules, or by enforceable agreements including joint powers agreements (JPAs) or memoranda of understanding (MOUs) to provide educational

services for children with disabilities. In situations such as transitions, transfers, and special placements, the educational jurisdiction of two or more public agencies may overlap and result in a shared obligation to ensure that a particular child receives all the services to which the child is entitled.

(7) A **“free appropriate public education”** or **“FAPE”** means special education and related services which meet all requirements of 34 CFR Sec. 300.17 and which, pursuant to 34 CFR Sec. 300.17(b), meet all applicable department rules and standards, including but not limited to these rules; the New Mexico standards for excellence; and department rules governing school personnel preparation, licensure, and performance; student rights and responsibilities; and student transportation.

(8) The **“general education curriculum,”** pursuant to 34 CFR Sec. 300.320, means the same curriculum that a public agency offers for nondisabled children. For New Mexico public agencies whose non-special education programs are subject to department rules, the general curriculum includes the content standards, benchmarks, and all other applicable requirements of the New Mexico standards for excellence and any other department rules defining curricular requirements.

(9) **“LEA”** means a local educational agency as defined in 34 CFR Sec. 300.28.

(10) **“Individualized education program”** or **“IEP”** means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Secs. 300.320 through 300.324.

(11) **“IEP team”** means, pursuant to 34 CFR Sec. 300.321, the public agency shall ensure that the IEP team for each child with a disability includes:

(a) the parents of the child;

(b) not less than one regular education teacher of the child (if the child is, or

may be, participating in the regular education environment);

(c)

not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;

(d)

a representative of the public agency who:

(i)

is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii)

is knowledgeable about the general education curriculum; and

(iii)

is knowledgeable about the availability of resources of the public agency;

(e)

an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in Subparagraphs (b) through (e) of Paragraph (11) of Subsection B of 6.31.2.7 NMAC;

(f)

at the discretion of the parent or public agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

(g)

whenever appropriate, the child with a disability.

(12)

“Individuals with Disabilities Education Improvement Act”

or **“IDEA”** means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 USC Secs. 1401 et seq., including future amendments.

(13) **“NMAC”**

means the New Mexico administrative code, including future amendments.

(14) **“NMSA**

1978” means the 1978 compilation of New Mexico statutes annotated, including future amendments.

(15) **“Parent”**

includes, in addition to the persons specified in 34 CFR Sec. 300.30, a child with a disability who has

reached age 18 and for whom there is no court-appointed general guardian, limited guardian, or other court-appointed person who has legal custody or has otherwise been authorized by a court to make educational decisions on the child’s behalf as provided in Subsection K of 6.31.2.13 NMAC. Pursuant to 34 CFR Sec. 300.519 and department policy, a foster parent of a child with a disability may act as a parent under Part B of IDEA if: (i) the foster parent or the state children, youth, and families department (CYFD) provides appropriate documentation to establish that CYFD has legal custody and has designated the person in question as the child’s foster parent; and (ii) the foster parent is willing to make the educational decisions required of parents under IDEA, and has no interest that would conflict with the interests of the child. A foster parent who does not qualify under the requirements but who meets all requirements for a surrogate parent under 34 CFR Sec. 300.519 may be appointed as a surrogate if the public agency responsible for making the appointment deems such action appropriate.

(16) **“Public**

agency” means the state educational agency, local educational agencies (LEAs), educational services agencies (ESAs), or nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA and any other political subdivisions of the state that are responsible for providing education to children with disabilities pursuant to 34 CFR Sec. 300.33.

(17) **“Puente**

para los ninos fund” means a risk pool fund in New Mexico to support high cost students with disabilities identified by LEAs pursuant to 34 CFR Sec. 300.704(c)(3)(i).

(18) **“SAT”**

means the student assistance team, which is a school-based group of people whose purpose is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general education.

(19) **“SED”**

means the special education division of the department.

(20) **“Special**

education” means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education.

(a)

As authorized by 34 CFR Secs. 300.8(a)(2)(ii) and 300.39(a)(2)(i), “special education” in New Mexico may include speech-language pathology services.

(b)

Speech-language pathology services shall meet the following standards to be considered special education:

(i)

the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before being properly evaluated under 34 CFR Secs. 300.301 through 300.306 and Subsection D of 6.31.2.10 NMAC;

(ii)

the IEP team that makes the eligibility determination finds that the child has a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child’s educational performance;

(iii)

the speech language pathology service consists of specially designed instruction that is provided to enable the child to have access to the general curriculum and meet the educational standards of the public agency that apply to all children; and

(iv)

the service is provided at no cost to the parents under a properly developed IEP that meets the requirements of Subsection B of 6.31.2.11 NMAC.

(c)

If all of the standards are met, the service shall be considered as special education rather than a related service.

(d) Student/staff caseloads for special education shall meet the requirements of Paragraphs (1) and (2) of Subsection H of 6.29.1.9 NMAC.

(21) A “**state-supported educational program**” means a publicly-funded program that:

(a) provides special education and related services to children with disabilities who come within the program’s educational jurisdiction;

(b) is operated by, or under contractual arrangements for, a state school, state educational institution, other state institution, state hospital, or state agency; and

(c) is primarily funded through direct legislative appropriations or other direct state support to a public agency other than a local school district.

(22) “**USC**” means the United States code, including future amendments.

C. Definitions related to dispute resolution. The following terms are listed in the order that reflects a continuum of dispute resolution options and shall have the following meanings for the purposes of these rules.

(1) “**Facilitated IEP meeting**” or “**FIEP meeting**” or “**FIEP**” means an IEP meeting that utilizes an independent, state-approved, state-funded, trained facilitator as an IEP facilitator to assist the IEP team to communicate openly and effectively, in order to resolve conflicts related to a student’s IEP.

(2) “**Mediation**” means a meeting or series of meetings that utilizes an independent, state-approved, state-funded, trained mediator to assist parties to reconcile disputed matters related to a student’s IEP or other educational, non-IEP-related issues.

D. The definitions in Subsection D of 6.31.2.7 NMAC apply only to 6.31.2.12 NMAC.

(1) “**Creativity/divergent thinking**”

means outstanding performance on a test of creativity/divergent thinking or in creativity/divergent thinking as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.

(2) “**Gifted child**” means a school-age person as defined in Subsection D of Section 22-13-6 NMSA 1978 whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that services are required to meet the child’s educational needs.

(3) “**Intellectual ability**” means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. The test administrator shall also consider the standard error of measure (SEM) in the determination of whether or not criteria have been met in this area.

(4) “**Problem-solving/critical thinking**” means an outstanding performance on a test of problem-solving/critical thinking or in problem-solving/critical thinking as documented by information from other sources as specified in Subparagraph (b) of Paragraph (2) of Subsection B of 6.31.2.12 NMAC.

(5) “**Subject matter aptitude/achievement**” means superior academic performance on a total subject area score on a standardized measure or as documented by information from other sources as specified in Paragraph (2) of Subsection C of 6.31.2.12 NMAC.

E. The definitions in Subsection E of 6.31.2.7 NMAC apply only to Subsection I of 6.31.2.13 NMAC.

(1) “**Expedited hearing**” means a hearing that is available on request by a parent or a public agency under 34 CFR Sec. 300.532(c) and is subject to the requirements of 34 CFR Sec. 300.532(c).

(2) “**Gifted services**” means services to gifted children as defined in Subsection A of 6.31.2.12 NMAC.

(3) “**Transmit**” means to mail, send by electronic mail (email) or telecopier (facsimile machine), or hand deliver a written notice or other document and obtain written proof of delivery by one of the following means:

(a) an email system’s confirmation of a completed transmission to an email address that is shown to be valid for the individual to whom the transmission was sent;

(b) a telecopier machine’s confirmation of a completed transmission to a number which is shown to be valid for the individual to whom the transmission was sent;

(c) a receipt from a commercial or government carrier showing to whom the article was delivered and the date of delivery;

(d) a written receipt signed by the secretary of education or designee showing to whom the article was hand-delivered and the date delivered; or

(e) a final decision to any party not represented by counsel for a due process hearing by the U.S. postal service, certified mail, return receipt requested, showing to whom the articles was delivered and the date of delivery.

F. The definitions in Subsection F of 6.31.2.7 NMAC apply only to Subsection B of 6.31.2.9 NMAC and Subsection L of 6.31.2.11 NMAC:

(1) “**Qualified student**” means, pursuant to Paragraph (1) of Subsection A of Section 22-13-8 NMSA 1978, a public school student who:

(a) has not graduated from high school;

(b) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and

(c) in terms of age:

(i) is at least five years of age prior to 12:01 a.m. on September 1 of the school year or will be five years of age prior to 12:01 a.m. on September 1 of the school year if the student is enrolled in a public school extended-year kindergarten program that begins prior to the start of the regular school year;

(ii) is at least three years of age at any time during the school year and is receiving special education pursuant to rules of the department; or

(iii) has not reached the student's 22nd birthday on the first day of the school year and is receiving special education in accordance with federal law.

(2) "School-age person" means, pursuant to Paragraph (2) of Subsection A of Section 22-13-8 NMSA 1978, a person who is not a qualified student but who meets the federal requirements for special education and who:

(a) will be at least three years old at any time during the school year;

(b) is not more than 21 years of age; and

(c) has not received a high school diploma or its equivalent.
[6.31.2.7 NMAC - Rp, 6.31.2.7 NMAC, 7/14/2020]

6.31.2.8 RIGHT TO A FREE APPROPRIATE PUBLIC EDUCATION (FAPE):

A. All children with disabilities aged three through 21 or who will turn three at any time during the school year who reside in New Mexico, including children with disabilities who have been suspended or expelled from school, have the right to a FAPE that is made available by one or more public agencies in compliance with all applicable requirements of 34 CFR Secs. 300.101 and 300.120 and these or other department rules and standards.

Children with disabilities who are enrolled in private schools have the rights provided by 34 CFR Secs. 300.129-300.148 and Subsection L of 6.31.2.11 NMAC.

B. Only children who meet the criteria in these rules may be included in calculating special education program units for state funding and counted as eligible children for federal flow-through funds under Part B of IDEA.
[6.31.2.8 NMAC - Rp, 6.31.2.8 NMAC, 7/14/2020]

6.31.2.9 PUBLIC AGENCY RESPONSIBILITIES:

A. Compliance with applicable laws and rules. Each New Mexico public agency, within the scope of its authority, shall develop and implement appropriate policies, procedures, programs, and services to ensure that all children with disabilities who reside within the public agency's educational jurisdiction, including children who are enrolled in private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, or are schooled at home, are identified and evaluated and have access to a free appropriate public education (FAPE) in compliance with all applicable requirements of state and federal laws and rules. This obligation applies to all New Mexico public agencies that are responsible under laws, rules, rules, or written agreements for providing educational services for children with disabilities, regardless of whether that public agency receives funds under IDEA and regardless of whether it provides special education and related services directly, by contract, by referrals to private schools or facilities including residential treatment centers, day treatment centers, hospitals, mental health institutions, or through other arrangements.

B. Public agency funding and staffing.

(1) Each public agency that provides special education or related services to children with disabilities shall

allocate sufficient funds, staff, facilities and equipment to ensure that the requirements of IDEA and all department rules and standards that apply to programs for children with disabilities are met.

(2) The public agency with primary responsibility for ensuring that FAPE is available to a child with a disability on the date set by the department for a child count or other report shall include that child in its report for that date. Public agencies with shared or successive responsibilities for serving a particular child during a single fiscal year are required to negotiate equitable arrangements through joint powers agreements or memorandums of understanding or interstate agreements for sharing the funding and other resources available for that child. Such agreements shall include provisions with regard to resolving disputes between the parties to the agreement.

(3) Placement of students in private residential treatment centers, or other out of home treatment or habilitation programs, by the IEP team, or by a due process decision. In no event shall a child with an IEP be allowed to remain in an out of home treatment or habilitation program for more than 10 days without receiving special education and related services. The school district in which the qualified student or school-age person lives, whether in-state or out-of-state, is responsible for the educational, nonmedical care and room and board costs of that placement. The sending school shall be responsible for the provision of special education and related services.

(a) Agreements between the resident school district of the qualified student or school-age person and a private residential treatment center shall be on the form posted on the department's website or on a form otherwise approved by the department and shall be reviewed and approved by the secretary of public education.

(b) Agreements shall provide for:

(i) student evaluations and eligibility;

(ii) an educational program for each qualified student or school-age person that meets state standards for such programs, except that teachers employed by private schools are not required to be highly qualified;

(iii) the provision of special education and related services in conformance with an IEP that meets the requirements of federal and state law and applicable rules;

(iv) adequate classroom or other physical space that allows the school district to provide an appropriate education;

(v) a detailed description of the costs for the placement; and

(vi) an acknowledgement of the authority of the local school board and the department to conduct on-site evaluations of programs and student progress to ensure that state standards are met.

(4) Educational agencies may seek payment or reimbursement from noneducational agencies or public or private insurance for services or devices covered by those agencies that are necessary to ensure FAPE to children with disabilities. Claims for payment or reimbursement shall be subject to the procedures and limitations established in 34 CFR Secs. 300.154(b) and 300.154(d) through (g), Section 22-13-8 NMSA 1978 and any laws, rules, executive orders, contractual arrangements, or other requirements governing the noneducational payor's obligations.

(5) Risk pool fund. (Puente para los ninos fund.)

(a) Local educational agency high cost fund.

(i) In compliance with 34 CFR Sec. 300.704(c), the department may maintain a risk pool fund to support high cost children with disabilities identified by LEAs.

(ii) Funds distributed under this program will be on a reimbursable basis.

(b) Application for funds. LEAs desiring to be reimbursed for the cost of children with disabilities with high needs shall file an application in accordance with the department's puente para los ninos fund as described on the department's website.

(6) Children with disabilities who are covered by public benefits or insurance. Pursuant to 34 CFR Sec. 300.154(d), a public agency may use the medicaid or other public benefits or insurance in which a child participates to provide or pay for services required under IDEA-Part B rules, as permitted under the public insurance program, except as provided in Subparagraph (a) of Paragraph (6) of Section B of 6.31.2.9 NMAC.

(a) With regard to services required to provide FAPE to an eligible child, the public agency:

(i) may not require parents to sign up for or enroll in public insurance programs in order for their child to receive FAPE under Part B of IDEA;

(ii) may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to IDEA-Part B rules, but pursuant to 34 CFR Sec. 300.154(f)(2), may pay the cost that the parent otherwise would be required to pay; and

(iii) may not use a child's benefits under a public benefits or insurance program if that use would: (A) decrease available lifetime coverage or any other insured benefit; (B) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the child outside of the time the child is in school; (C) increase premiums or lead to the discontinuation of benefits or insurance; or (D) risk loss of

eligibility for home- and community-based waivers, based on aggregate health-related expenditures.

(b) Prior to obtaining the parental consent described in Subparagraph (c) of this paragraph, and prior to accessing the parent's or child's public benefits, the public agency shall provide written notice to the child's parents, consistent with 34 CFR Sec. 300.503(c). The written notice shall be provided annually thereafter.

(i) The notice shall include a statement of the parental consent provisions in 34 CFR Secs. 99.30 and 300.622 and shall specify: (A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the child; (B) the purpose of the disclosure (e.g., billing for services under 34 CFR Part 300; (C) the public agency to which the disclosure may be made (e.g. New Mexico medicaid program); and (D) that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under 34 CFR Part 300.

(ii) The notice shall further include: (A) a statement of the "no cost" provisions in 34 CFR Secs. 300.154(d)(2)(i) through 300.154(d)(2)(iii); (B) a statement that the parents have the right under 34 CFR Parts 99 and 300 to withdraw their consent to disclosure of their child's personally identifiable information to the New Mexico medicaid program at any time; and (C) a statement that the withdrawal of consent or refusal to provide consent under 34 CFR Parts 99 and 300 to disclose personally identifiable information to the New Mexico medicaid program does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(c) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notice to the child's parents consistent with

Subparagraph (b) of this paragraph, the public agency shall obtain written parental consent as defined by 34 CFR Sec. 300.9. The written consent, consistent with the requirements of 34 CFR Sec. 300.154(d)(2)(iv), shall:

(i) meet the requirements of 34 CFR Secs. 99.30 and 300.622 and shall specify: (A) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to the child; (B) the purpose of the disclosure (e.g., billing for services under 34 CFR Part 300; (C) the public agency to which the disclosure may be made (e.g, New Mexico medicaid program); and

(ii) shall specify that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under 34 CFR Part 300.

(d) The public agency is not required to obtain a new parental consent if the following conditions are present:

(i) there is no change in any of the following: (A) the type of services to be provided to the child; (B) the amount of services to be provided to the child; or (C) the cost of the services to be charged to the public benefits or insurance program; and

(ii) the public agency has on file a parental consent meeting the requirements of 34 CFR Secs. 300.9, 99.30, and 300.622.

(e) Once the public agency obtains the one-time consent consistent with 34 CFR Sec. 300.154(d)(2)(iv), the public agency is not required to obtain parental consent before it accesses the child's or parent's public benefits or insurance in the future, regardless of whether there is a change in the type or amount of services to be provided to the child or a change in the cost of the services to be charged to the public benefits or insurance program.

(f) If a child transfers to a new public

agency, the new public agency shall provide the written notification described in 34 CFR Sec. 300.154(d)(2)(v) and Subparagraph (b) of this paragraph, and shall then obtain parental consent meeting the requirements of 34 CFR Sec. 300.154(d)(2)(iv).

(7) Children with disabilities who are covered by private insurance benefits. Pursuant to 34 CFR Sec. 300.154(e), an educational agency shall obtain a parent's informed written consent for each proposed use of private insurance benefits and shall inform parents that their refusal to permit the use of their private insurance will not relieve the educational agency of its responsibility to ensure that all required services are provided at no cost to the parents. The public agency may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to IDEA-Part B rules.

(8) Pursuant to 34 CFR Sec. 300.154(f):

(a) if a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance when the parent would incur a cost for a specified service required under IDEA-Part B rules, to ensure FAPE the public agency may use its Part B funds to pay for the service; and

(b) to avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use its Part B funds to pay the cost the parents otherwise would have to pay to use the parent's insurance (e.g., the deductible or co-pay amounts).

(9) Staff training and qualifications.

(a) Each public agency is responsible for ensuring that personnel serving children with disabilities are qualified under state licensure requirements and are adequately prepared for

their assigned responsibilities, pursuant to 34 CFR Sec. 300.156. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to children with disabilities under Part B of IDEA.

(b) Each public agency and charter school shall train their school administrators and teachers who teach reading to implement appropriate research-based reading interventions prior to referring the student for a special education evaluation and shall train their special education teachers to provide appropriate specialized reading instruction for students with dyslexia who have been identified as eligible for special education services.

C. IDEA applications and assurances. Each New Mexico public agency that desires to receive IDEA flow-through funds shall file an annual application with the department in the form prescribed by the department. Each application shall:

(1) provide all information requested by the department;

(2) demonstrate to the department's satisfaction that the public agency is in compliance with all applicable requirements of 34 CFR Secs. 300.200 through 300.230 and these or other department rules and standards;

(3) include an agreement that the public agency upon request will provide any further information the department requires to determine the public agency's initial or continued compliance with all applicable requirements;

(4) include assurances satisfactory to the department that the public agency does and will continue to operate its programs in compliance with all applicable federal and state programmatic, fiscal and procedural requirements including the development of joint powers

agreements, memoranda of understanding or other interagency agreements to address shared or successive responsibilities to meet the educational needs of a particular child during a single fiscal year; and

(5) pursuant to Subsection C of Section 22-8-11 NMSA 1978, the department shall not approve and certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the process was solicited.

D. Early intervening services set aside funds. Fifteen percent set aside.

(1) Pursuant to 34 CFR Secs. 300.208(a)(2) and 300.226, LEAs may use up to fifteen percent of the amount the LEA receives under Part B of IDEA to implement early intervening services for children with or without disabilities in kindergarten through grade 12 with particular emphasis on children in kindergarten through grade three.

(2) Prior to the implementation or use of these set aside funds, the LEA shall have on record with the department an approved plan for use of these funds as described by 34 CFR Sec. 300.226(b) and how such activities will be coordinated with regional education cooperatives as described in 34 CFR Sec. 300.226(e), if applicable.

(3) The LEA plan for use of set aside funds shall be submitted as an addendum to its annual application for Part B funding. If the LEA determines to implement a set aside plan after the initial application, a request for implementation of a set aside plan shall be submitted for approval 60 days before the implementation of the plan.

(4) Each LEA that develops and maintains coordinated, early intervening services shall report annually to the department as provided in 34 CFR Sec. 300.226(d).

E. Significant disproportionality.

(1) Pursuant to CFR 34 Sec. 300.646, LEAs shall provide for the collection and examination of data to determine if significant disproportionality, based on race and ethnicity, is occurring with respect to:

(a) the identification of children as children with disabilities including the identification of children as children with disabilities in accordance with a particular impairment as defined by 34 CFR Sec. 300.8;

(b) the placement in particular educational settings of these children; and

(c) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

(2) Each public agency shall reserve the fifteen percent early intervening funds if they are identified for having data that is significantly disproportionate in any one of the following categories:

(a) suspension of students with disabilities;

(b) over identification of students with disabilities;

(c) over identification of students in accordance with a particular impairment as defined by 34 CFR Sec. 300.8; and

(d) placement of students with disabilities in a particular setting.

(3) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities or the placement in particular educational settings of these children, in accordance with Paragraph (1) of this subsection, the LEA shall:

(a) provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to

ensure that the policies, procedures, and practices comply with the requirements of IDEA; and

(b) require any LEA identified under Paragraph (1) of this subsection to reserve the maximum amount of funds under 34 CFR Sec. 300.226 to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly over-identified under Paragraph (1) of this subsection; and

(c) require the LEA to publicly report on the revision of policies, practices, and procedures described under Subparagraph (b) of this paragraph.

F. Annual determinations. Each local educational agency and other public agencies when applicable shall be assigned an annual determination. The determinations shall be consistent with those provided in 34 CFR Sec. 300.603(b) based on the local educational agency's performance on the targets established in the department's state performance plan.

(1) For determinations of needs intervention and needs substantial intervention, the local educational agency may request an opportunity for an informal hearing. The request for hearing shall be made in writing to the secretary of public education within 30 days of the date of the determination.

(2) The hearing will afford the local educational agency the opportunity to demonstrate why the department should not make the determination of needs intervention or needs substantial intervention. The hearing shall be conducted by the secretary or the secretary's designee. Formal rules of evidence shall not apply to the hearing.

G. Notification of public agency in case of ineligibility. Pursuant to 34 CFR Sec. 300.221, if the department determines that a public agency is not eligible under Part B of IDEA, the department shall notify the affected public agency of

that determination and provide the public agency with reasonable notice and an opportunity for a hearing under 34 CFR Sec. 76.401(d).

H. Withholding of funds for noncompliance. Pursuant to 34 CFR Sec. 300.222, if the department, after reasonable notice and an opportunity for a hearing under 34 CFR Sec. 76.401(d), finds that a public agency that has previously been determined to be eligible is failing to comply with any requirement described in 34 CFR Secs. 300.201 through 300.213 and 300.608, the department shall reduce or may not provide any further Part B payments to the public agency until the department is satisfied that the public agency is in compliance with that requirement.

I. Reallocation of funds. If a new LEA is created, the base payment portion of IDEA subgrant of the LEA that would have served children with disabilities now being served by the new LEA will be adjusted pursuant to 34 CFR Sec. 300.705(b)(2). IDEA funds to new charter schools that are LEAs will be allocated pursuant to 34 CFR Secs. 76.785 through 76.799 and 300.705(b). Pursuant to 34 CFR Sec. 300.705(c), if the department determines that a public agency is adequately providing FAPE to all children with disabilities residing in the area served by that public agency with state and local funds, the department may reallocate any portion of the funds under this part that are not needed by that public agency to provide FAPE to other LEAs in the state that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs or the department may also retain those funds for use at the state level as provided by 34 CFR Sec. 300.705(c).

J. Prohibition on mandatory medication. Each LEA and other public agencies serving students with disabilities are prohibited from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV,

or V in section 202(c) of the federal Controlled Substances Act (21 USC 812(c)) for a student as a condition of attending school, receiving an evaluation under 34 CFR Secs. 300.300 through 300.311, or receiving services under Part B of IDEA. This prohibition shall be construed as provided in 34 CFR Sec. 300.174(b). [6.31.2.9 NMAC - Rp, 6.31.2.9 NMAC, 7/14/2020]

6.31.2.10 IDENTIFICATION, EVALUATIONS, AND ELIGIBILITY DETERMINATIONS:

A. Child find. Each public agency shall adopt and implement policies and procedures to ensure that all children with disabilities who reside within the public agency's educational jurisdiction, including children with disabilities attending private schools or facilities such as residential treatment centers, day treatment centers, hospitals, mental health institutions, detention and correctional facilities, children who are schooled at home, highly mobile children, children who reside on Indian reservations, and children who are advancing from grade to grade, regardless of the severity of their disability, and who are in need of special education and related services, are located, evaluated, and identified in compliance with all applicable requirements of 34 CFR Secs. 300.111, 300.131, 300.301 through 300.306, and these or other department rules and standards. For preschool children, child find screenings shall serve as interventions under Subsection B of 6.31.2.10 NMAC.

B. The public agency shall follow a three-layer model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning as set forth in Subsection D of 6.29.1.9 NMAC.

C. Criteria for identifying children with perceived specific learning disabilities.

(1) Each public agency shall use the three-layer model of student intervention for students suspected of having a perceived specific learning disability, consistent with the department rules, policies, and standards for children who are being referred for evaluation due to a suspected disability under the specific learning disability category in compliance with 34 CFR Sec. 300.307.

(a) The public agency shall, subject to Subparagraph (d) of this paragraph, require that the group established under 34 CFR Secs. 300.306(a) (1) and 300.308 for the purpose of determining eligibility of students suspected of having a specific learning disability, consider data obtained during implementation of layers 1 and 2 in making an eligibility determination.

(b) To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group shall consider, as part of the evaluation required in 34 CFR Secs. 300.304 through 300.306:

(i) data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

(ii) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

(c) The documentation of the determination of eligibility, as required by 34 CFR Sec. 300.306(c) (1), shall meet the requirements of 34 CFR Sec. 300.311, including:

(i) a statement of the basis for making the determination and an assurance that the determination has been made in accordance with 34 CFR Sec. 300.306(c)(1); and

(ii) a statement whether the child does not achieve adequately for the child's age or to meet state-approved grade-level standards consistent with 34 CFR Sec. 300.309(a)(1); and

(iii) a statement whether the child does not make sufficient progress to meet age or grade-level standards consistent with 34 CFR Sec. 300.309(a)(2) (i), or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade level standards, or intellectual development consistent with 34 CFR Sec. 300.309(a)(2)(ii); and

(iv) if the child has participated in a process that assesses the child's response to scientific, research-based intervention: a statement of the instructional strategies used and the student-centered data collected; documentation that the child's parents were notified about the state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; strategies for increasing the child's rate of learning; and the parents' right to request an evaluation.

(d) Notwithstanding the provisions of Subsection D of 6.31.2.10 NMAC, a parent may request an initial special education evaluation at any time during the public agency's implementation of layers 1 and 2 of the three-layer model of student intervention. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency shall evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency shall issue prior written notice in accordance with 34 CFR Sec. 300.503. The parent may challenge this decision by requesting a due process hearing.

(2) Preschool children suspected of having a specific learning disability shall be evaluated in accordance with

Subparagraph (f) of Paragraph (5) of Subsection A of 6.31.2.11 NMAC and 34 CFR Secs. 300.300 through 300.305, which may include the severe discrepancy model.

(3) Public agencies shall implement the dual discrepancy model in kindergarten through third grade utilizing the student assistance team and the three-layer model of student intervention as defined and described in the *New Mexico Technical Evaluation and Assessment Manual* (New Mexico T.E.A.M.). Data on initial evaluations for perceived learning disabilities in kindergarten through grade three shall be submitted to the department through the student teacher accountability reporting system (STARS).

(4) In identifying children with specific learning disabilities in grades four through 12, the public agency may use the dual discrepancy model as defined and described in the New Mexico T.E.A.M. or the severe discrepancy model as defined and described in New Mexico T.E.A.M.

D. Evaluations and reevaluations.

(1) Initial evaluations.

(a) Each public agency shall conduct a full and individual initial evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR Secs. 300.305 and 300.306 and other department rules and standards before the initial provision of special education and related services to a child with a disability.

(b) Request for initial evaluation. Consistent with the consent requirement in 34 CFR Sec. 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(c) Procedures for initial evaluation.

(i) The initial evaluation shall be conducted within 60 calendar days of receiving parental consent for evaluation.

(ii) Each public agency shall follow evaluation procedures in compliance with applicable requirements of 34 CFR Sec. 300.304 and other department rules and standards to determine: (1) if the child is a child with a disability under 34 CFR Sec. 300.8; and (2) if the child requires special education and related services to benefit from their education program.

(iii) Each public agency shall maintain a record of the receipt, processing, and disposition of any referral for an individualized evaluation. All appropriate evaluation data, including complete SAT file documentation and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the eligibility determination team.

(iv) A parent may request an initial special education evaluation at any time. If the public agency agrees with the parent that the child may be a child who is eligible for special education services, the public agency shall evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency shall issue prior written notice in accordance with 34 CFR Sec. 300.503. The parent can challenge this decision by requesting a due process hearing.

(d) Exception to the 60-day time frame. The requirements of this subsection do not apply:

(i) if the parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(ii) if the child enrolls in a school of another public agency after the 60-day time frame in this subsection has begun and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 CFR Sec. 300.8.

(e) The exception to the 60-day time frame in Item (ii) of Subparagraph (d) of Paragraph (1) of Subsection D of

6.31.2.10 NMAC applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

(f)

The eligibility determination team, including the parent and child, if appropriate, shall meet to determine if the child is a child with a disability and requires an IEP upon completion of the initial evaluation.

(2)

Reevaluations.

(a)

Each LEA shall ensure that a reevaluation of each child is conducted at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary, and is in compliance with the requirements of 34 CFR Secs. 300.303 through 300.311, and any other applicable department rules and standards.

(b)

Reevaluations may be conducted more often if:

(i)

the LEA determines the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(ii)

the child's parent or teacher requests a reevaluation.

(c)

Reevaluations may not occur more than once a year, unless the parent and public agency agree otherwise.

(d)

Procedures for conducting evaluations and reevaluations.

(i)

The public agency shall provide notice to the parents of a child with a disability that describes any evaluation procedures the public agency proposes to conduct in compliance with 34 CFR Sec. 300.503.

(ii)

The initial evaluation (if appropriate) and any reevaluations shall begin with a review of existing information by

a group that includes the parents, the other members of a child's IEP team and other qualified professionals, as appropriate, to determine what further evaluations and information are needed to address the question in 34 CFR Sec. 300.305(a)(2). Pursuant to 34 CFR Sec. 300.305(b), the group may conduct its review without a meeting.

(iii)

If it is determined that a child requires an individualized evaluation or reevaluation, the public agency is required to follow the procedures established by the department.

(iv)

Each public agency shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the child's family that may assist in determining if the child is a child with a disability, the content of the child's IEP including information related to assisting the child to be involved and progress in the general education curriculum or for a preschool child to participate in appropriate activities.

(e)

Each public agency shall maintain a record of the receipt, processing, and disposition of any referral for an individualized reevaluation.

Reevaluation shall be completed on or before the three year anniversary date. All appropriate reevaluation data and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the eligibility determination team or IEP team.

(f)

The parents of a child with a disability who disagree with an evaluation obtained by the public agency have the right to obtain an independent educational evaluation of the child at public expense pursuant to 34 CFR Sec. 300.502.

E. Procedural

requirements for the assessment and evaluation of culturally and linguistically diverse children.

(1) Each

public agency shall ensure that

tests and other evaluation materials used to assess children are selected, provided, and administered so as not to be discriminatory on a racial or cultural basis and are provided and administered in the child's native language or other mode of communication, such as American sign language, and in the form most likely to yield accurate information, on what the child knows and can do academically, developmentally and functionally, unless it is clearly not feasible to select, provide, or administer pursuant to 34 CFR Sec. 300.304(c)(1).

(2)

Each public agency shall ensure that selected assessments and measures are valid and reliable and are administered in accordance with instructions provided by the assessment producer and are administered by trained and knowledgeable personnel.

(3) Each

public agency shall consider information about a child's language proficiency in determining how to conduct the evaluation of the child to prevent misidentification. A child may not be determined to be a child with a disability if the determinant factor for that eligibility determination is limited English proficiency. Comparing academic achievement results with grade level peers in the public agency with similar cultural and linguistic backgrounds should guide this determination process and ensure that the child is exhibiting the characteristics of a disability and not merely language difference in accordance with 34 CFR Sec. 300.306(b)(1).

(4) Each

public agency shall ensure that the child is assessed in all areas related to the suspected disability.

(5) Policies for

public agency selection of assessment instruments include:

(a)

assessment and evaluation materials that are tailored to assess specific areas of educational need; and

(b)

assessments that are selected ensure

that results accurately reflect the child's aptitude or achievement level.

(6) Public agencies in New Mexico shall devote particular attention to the foregoing requirements in light of the state's cultural and linguistic diversity. Persons assessing culturally or linguistically diverse children shall consult appropriate professional standards to ensure that their evaluations are not discriminatory and should include appropriate references to such standards and concerns in their written reports.

F. Eligibility determinations.

(1) General rules regarding eligibility determinations

(a) Upon completing the administration of tests and other evaluation materials, a group of qualified professionals and the parent of the child shall determine whether the child is a child with a disability, as defined in 34 CFR Sec. 300.8 and Paragraph (2) of Subsection B of 6.31.2.7 NMAC. The determination shall be made in compliance with all applicable requirements of 34 CFR Sec. 300.306 and these or other department rules and standards and, for a child suspected of having a specific learning disability, in compliance with the additional procedures of 34 CFR Secs. 300.307 through 300.311, and these or other department rules, policies, and standards.

(b) The public agency shall provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.

(2) Optional use of developmentally delayed classification for children aged three through nine.

(a) The developmentally delayed classification may be used at the option of individual local educational agencies but may only be used for children who do not qualify for special education under any other disability category.

(b) Children who are classified as developmentally delayed shall be reevaluated during the school year in which they turn nine and will no longer be eligible in this category when they become 10. A student who does not qualify under any other available category at age 10 will no longer be eligible for special education and related services. [6.31.2.10 NMAC - Rp, 6.31.2.10 NMAC, 7/14/2020]

6.31.2.11 EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES:

A. Preschool programs for children aged three through five.

(1) Each public agency shall ensure that a free appropriate public education is available for each preschool child with a disability within its educational jurisdiction no later than the child's third birthday and that an individualized education program (IEP) under Part B or an individual family services plan (IFSP) under Part C of IDEA is in effect by that date in compliance with 34 CFR Secs. 300.101, 300.124, and 300.323(b).

(2) Eligibility to enroll in Part B preschool program. If a child turns three at any time during the school year and is determined to be eligible under Part B, the child may enroll in a Part B preschool program when the child turns three if the parent so chooses, whether or not the child has previously been receiving Part C services.

(3) To ensure effective transitioning from IDEA-Part C programs to IDEA-Part B programs, each public agency shall conduct a full and individual initial comprehensive evaluation, at no cost to the parent, and in compliance with requirements of 34 CFR Secs. 300.300, 300.301, 300.302, 300.304, and 300.305, and other department rules and standards before the initial provision of Part B special education and related services to a child with a disability.

(a) The initial comprehensive evaluation process shall be conducted in all areas of suspected disability.

(b) The Part B eligibility determination team shall review current assessments and shall determine the additional data and assessments needed for the comprehensive evaluation. Current assessments are defined as assessments, other than medical assessments, conducted no more than six months prior to the date of the meeting of the Part B eligibility determination team.

(c) The Part B eligibility determination team shall consider educationally relevant medical assessments as part of the review of existing evaluation data. The determination of eligibility may not be made solely on the basis of medical assessments. If the team considers medical assessments conducted more than six months prior to the date of the meeting, the team shall document the appropriateness of considering such medical assessments.

(4) Each public agency shall develop and implement appropriate policies and procedures to ensure a smooth and effective transition from Part C to Part B programs for preschool children with disabilities within the public agency's educational jurisdiction, in compliance with 34 CFR Sec. 300.124. Each LEA and other public agencies as appropriate shall make reasonable efforts to establish productive working relations with local Part C programs and when given reasonable notice shall participate in the transition planning conferences arranged by local Part C providers.

(5) In particular:

(a) Each LEA shall survey Part C programs within its educational jurisdiction in its child find efforts to identify children who will be eligible to enter the LEA's Part B preschool program in future years.

(b) Each LEA shall promote parent and

family involvement in transition planning with Part C programs, community programs, and related services providers at least six months before the child is eligible to enter the LEA's Part B preschool program.

(c)

Each LEA shall establish and implement procedures to support successful transitions including parent training, professional development for special educators and general educators, and student and parent self-advocacy training and education.

(d)

Each LEA shall assist parents in becoming their child's advocates as the child makes the transition through systems.

(e)

Each LEA shall participate in transition planning conferences arranged by the designated Part C lead agency no less than 90 days prior to the anticipated transition or the child's third birthday, whichever occurs first, to facilitate informed choices for all families.

(f)

Each LEA shall designate a team including parents and qualified professionals to review existing evaluation data for each child entering the LEA's preschool program in compliance with 34 CFR Sec. 300.305, and based on that review to identify what additional data, if any, are needed to determine the child's eligibility for Part B services or develop an appropriate program in a manner that is consistent with Paragraph (3) of Subsection A of this section. The notice of procedural safeguards shall be given to the parents as provided in Paragraph (3) of Subsection D of 6.31.2.13 NMAC.

(g)

Development of IFSP, IEP or IFSP-IEP.

(i)

The IFSP, IEP, or IFSP-IEP will be developed by a team constituted in compliance with 34 CFR Sec. 300.321, including parents. For children transitioning from Part C programs to Part B programs, the team shall also include one or more early intervention providers who

are knowledgeable about the child. "Early intervention providers" are defined as Part C service coordinators or other representatives of the Part C system.

(ii)

For each child transitioning from a Part C program to a Part B preschool program, the LEA shall initiate a meeting to develop the eligible child's IFSP, IEP, or IFSP-IEP, in accordance with 34 CFR Sec. 300.124. The IFSP, IEP or IFSP shall be developed and implemented no later than the child's third birthday, consistent with 34 CFR Sec. 300.101(b).

(h)

In compliance with 34 CFR Sec. 300.101(b)(2), if a child's birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin. Each public agency shall engage in appropriate planning with the Part C lead agency so that the eligible child will be prepared to receive Part B special education and related services when the IEP team determines that the services under the IEP or IFSP will begin.

(i)

Each public agency shall develop policies and procedures to ensure a successful transition from Part B preschool for children with disabilities who are eligible for continued services in pre-kindergarten and kindergarten.

B. Individualized education programs (IEPs).

(1) Except

as provided in 34 CFR Secs. 300.130 through 300.144 for children enrolled by their parents in private schools, each public agency shall:

(1) develop, implement, review, and revise an IEP in compliance with all applicable requirements of 34 CFR Secs. 300.320 through 300.328, and these or other department rules and standards for each child with a disability within its educational jurisdiction; and (2) shall ensure that an IEP is developed, implemented, reviewed, and revised in compliance with all applicable requirements of 34 CFR Sec. 300.320 through 300.328, and these or other department rules

and standards for each child with a disability who is placed in or referred to a private school or facility by the public agency.

(2) Each IEP

or amendment shall be developed at a properly convened IEP meeting for which the public agency has provided the parent and, as appropriate, the child, with proper advance notice pursuant to 34 CFR Sec. 300.322 and Paragraph (1) of Subsection D of 6.31.2.13 NMAC and at which the parent and, as appropriate, the child have been afforded the opportunity to participate as members of the IEP team pursuant to 34 CFR Secs. 300.321, 300.322, and 300.501(b) and (c) and Subsection C of 6.31.2.13 NMAC.

(3) Except as

provided in 34 CFR Sec. 300.324(a)(4), each IEP shall include the signature and position of each member of the IEP team and other participants in the IEP meeting to document their attendance. Written notice of actions proposed or refused by the public agency shall also be provided in compliance with 34 CFR Sec. 300.503 and Paragraph (2) of Subsection D of 6.31.2.13 NMAC and shall be provided at the close of the IEP meeting. Informed written parental consent shall also be obtained for actions for which consent is required under 34 CFR Sec. 300.300 and Subsection F of 6.31.2.13 NMAC. An amended IEP does not take the place of the annual IEP conducted pursuant to CFR Sec. 300.324(a)(4), which requires that members of a child's IEP team shall be informed of any changes made to the IEP without a meeting.

(4) Agreement to modify IEP meeting requirement.

(a) In

making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes and instead may develop a written document to amend or modify the child's current IEP.

(b) If changes are made to the child’s IEP in accordance with Subparagraph (a) of this paragraph, the public agency shall ensure that the child’s IEP team is informed of those changes.

(5) For students with autism spectrum disorders (ASD) eligible for special education services under 34 CFR Sec. 300.8(c)(1), the strategies described in Subparagraphs (a) through (k) of this paragraph shall be considered by the IEP team in developing the IEP for the student. The IEP team shall document consideration of the strategies. The strategies shall be based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed to provide FAPE, addressed in the IEP:

(a) extended educational programming, including extended day or extended school year services that consider the duration of programs or settings based on assessment of behavior, social skills, communication, academics, and self-help skills;

(b) daily schedules reflecting minimal unstructured time and reflecting active engagement in learning activities, including lunch, snack, and recess periods that provide flexibility within routines, adapt to individual skill levels, and assist with schedule changes, such as changes involving substitute teachers and other in-school extracurricular activities;

(c) in-home and community-based training or viable alternatives to such training that assist the student with acquisition of social or behavioral skills, including strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community;

(d) positive behavior support strategies based on relevant information including:

(i) antecedent manipulation, replacement

behaviors, reinforcement strategies, and data-based decisions; and

(ii) a behavioral intervention plan focusing on positive behavior supports and developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings;

(e) futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;

(f) parent or family training and support, provided by qualified personnel with experience in ASD, that:

(i) provides a family with skills necessary for a child to succeed in the home or community setting;

(ii) includes information regarding resources such as parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching and management techniques related to the child’s curriculum; and

(iii) facilitates parental carryover of in-home training, including, for example, strategies for behavior management and developing structured home environments or communication training so that parents are active participants in promoting the continuity of interventions across all settings;

(g) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social or behavioral progress based on the child’s developmental and learning level and that encourages work towards individual independence as determined by:

(i) adaptive behavior evaluation results;

(ii) behavioral accommodation needs across settings; and

(iii) transitions within the school day;

(h) communication interventions, including communication modes and functions that enhance effective communication across settings such as augmentative, incidental, and naturalistic teaching;

(i) social skills supports and strategies based on social skills assessment or curriculum and provided across settings, including trained peer facilitators, video modeling, social stories, and role playing;

(j) professional educator and staff support, including training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP; and

(k) teaching strategies based on peer reviewed, research-based practices for students with ASD, including those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, and social skills training.

(6) Each local education agency in the state shall provide the parents of a student who is diagnosed as hearing impaired, deaf, blind, visually impaired, or deafblind with information about the educational programs offered by the New Mexico school for the deaf (NMSD) or New Mexico school for the blind and visually impaired (NMSBVI) prior to and at each IEP. NMSD and NMSBVI shall provide LEAs relevant information as described in this paragraph. At the parent’s or public agency’s request, NMSD, NMSBVI, or both shall be invited to the IEP meeting so that the full continuum of services is represented at the IEP meeting pursuant to 34 CFR Secs. 300.115 and 300.321(a)(6).

C. Least restrictive environment.

(1) Except as provided in 34 CFR Sec. 300.324(d) and Subsection K of 6.31.2.11 NMAC

for children with disabilities who are convicted as adults under state law and incarcerated in adult prisons, all educational placements and services for children with disabilities shall be provided in the least restrictive environment that is appropriate to each child's needs in compliance with 34 CFR Secs. 300.114 through 300.120.

(2) In determining the least restrictive environment for each child's needs, public agencies and their IEP teams shall ensure that the following requirements are met.

(a) The requirements of 34 CFR Sec. 300.114(a)(2) for each public agency to ensure that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and that special classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) The required continuum of alternative placements as specified in 34 CFR Sec. 300.115.

(c) The requirement of 34 CFR Sec. 300.116(c) that each child with a disability be educated in the school that he or she would attend if nondisabled unless the child's IEP requires some other arrangement.

(d) The requirement of 34 CFR Sec. 300.116(e) that a child with a disability not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

(e) The requirements of 34 CFR Sec. 300.320(a)(4) that the IEP for each child with a disability include a statement of the special education and related services and supplementary

aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities with nondisabled children.

(f) The requirement of 34 CFR Sec. 300.324(a)(3) that the regular education teacher of a child with a disability, as a member of the IEP team, shall assist in determining the supplementary aids and services, program modifications or supports for school personnel that will be provided for the child in compliance with 34 CFR Sec. 300.320(a)(4).

(g) The requirement of 34 CFR Sec. 300.320(a)(5) that the IEP include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and the activities described in 34 CFR Secs. 300.320(a)(4) and 300.117.

(h) The requirements of 34 CFR Sec. 300.503 that a public agency give the parents written notice a reasonable time before the public agency proposes or refuses to initiate or change the educational placement of the child or the provision of FAPE to the child and that the notice include a description of any other options considered and the reasons why those options were rejected.

(i) The requirement of 34 CFR Sec. 300.120 that the department carry out activities to ensure that Sec. 300.114 is implemented by each public agency and that, if there is evidence that a public agency makes placements that are inconsistent with Sec. 300.114, the department shall review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action.

D. Performance goals and indicators.

(1) Pursuant to the requirements of 34 CFR Sec. 300.157(a), the content standards and benchmarks from the department's standards for excellence (Chapter 29 of Title 6 of NMAC) for all children attending public schools and state-supported educational programs in New Mexico shall provide the basic performance goals and indicators for children with disabilities in the general education curriculum.

(2) The IEP academic goals shall align with the New Mexico content standards and benchmarks, including the expanded performance standards for students with significant cognitive disabilities, however, functional goals do not have to align with the standards and benchmarks.

(a) Beginning in the 2012-2013 school year, IEP academic goals in English language arts and mathematics for students in kindergarten through grade three shall align with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC).

(b) Beginning in the 2013-2014 school year, IEP academic goals in English language arts and mathematics for students in grades four through 12 shall align with the English Language Arts Common Core Standards (6.29.13 NMAC) and the Mathematics Common Core Standards (6.29.14 NMAC).

(3) Unless waivers or modifications covering individual public agencies' programs have been allowed by the department or the secretary of education, the general education curriculum and the content standards and benchmarks shall only be adapted to the extent necessary to meet the needs of individual children with disabilities as determined by IEP teams in individual cases.

E. Participation in statewide and district-wide assessments. Each local educational agency and other public agencies when applicable shall include

all children with disabilities in all statewide and district-wide assessment programs. Each public agency shall collect and report performance results in compliance with the requirements of 34 CFR Secs. 300.157 and 300.160(f) and Sec. 1111(h) of the Elementary and Secondary Education Act, and any additional requirements established by the department. Students with disabilities may participate:

(1) in the appropriate general assessment in the same manner as their nondisabled peers; this may include the use of adaptations that are deemed appropriate for all students by the department; or

(2) in the appropriate general assessment with appropriate accommodations in administration if necessary; public agencies shall use the current guidance from the department about accommodations as specified in the student's IEP; or

(3) in alternate assessments for the small number of students for whom alternate assessments are appropriate under the department's established participation criteria; the IEP team shall agree and document that the student is eligible for participation in an alternate assessment based on alternate achievement standards according to 34 CFR Sec. 300.320(a)(6).

F. Behavioral management and discipline.

(1) Behavioral planning in the IEP. Pursuant to 34 CFR Sec. 324(a)(2)(i), the IEP team for a child with a disability whose behavior impedes his or her learning or that of others shall consider, if appropriate, strategies to address that behavior, including the development of behavioral goals and objectives and the use of positive behavioral interventions, strategies, and supports to be used in pursuit of those goals and objectives. Public agencies are strongly encouraged to conduct functional behavioral assessments (FBAs) and integrate behavioral intervention plans (BIPs) into the IEPs for students who exhibit problem

behaviors well before the behaviors result in proposed disciplinary actions for which FBAs and BIPs are required under the federal rules.

(2) Suspensions, expulsions, and disciplinary changes of placement. Suspensions, expulsions and other disciplinary changes of placement for children with disabilities shall be carried out in compliance with all applicable requirements of 34 CFR Secs. 300.530 through 300.536, and these or other department rules and standards, including particularly 6.11.2.11 NMAC, governing interim disciplinary placements and long-term suspensions or expulsions of students with disabilities.

(3) FAPE for children removed from current placement for more than 10 school days in a school year. FAPE shall be provided in compliance with all applicable requirements of 34 CFR Sec. 300.530(d) and these or other department rules and standards for all children with disabilities who have been removed from their current educational placements for disciplinary reasons for more than 10 school days during a school year, as defined in 34 CFR Sec. 300.536.

(4) LEAs shall keep an accurate accounting of suspension and expulsion rates for children with disabilities as compared to children without disabilities to ensure that children with disabilities are not being expelled or suspended at a significantly higher rate than children without disabilities.

G. Graduation planning and post-secondary transitions.

(1) The IEP for each child with a disability in grades 8 through 12 is developed, implemented, and monitored in compliance with all applicable requirements of the department's standards for excellence, (Chapter 29 of Title 6 of the NMAC), and these or other department rules and standards. The graduation plan shall be integrated into the transition planning and services provided in compliance with 34 CFR Secs. 300.320(b) and 300.324(c).

(a) Graduation plans shall include the course of study, projected date of graduation, and if the child is not on target for the graduation plan, the strategies and responsibilities of the public agency, child, and family shall be identified in the IEP.

(b) Graduation options for children with disabilities at Paragraph (13) of Subsection J of 6.29.1.9 NMAC shall align with state standards with benchmarks when appropriate.

(c) An alternative degree that does not fully align with the state's academic standards, such as a certificate or high school equivalency credential, does not end a child's right to FAPE pursuant to 34 CFR Sec. 300.102(a)(3).

(2) Appropriate post-secondary transition planning for children with disabilities is essential. Public agencies shall integrate transition planning into the IEP process pursuant to 34 CFR Secs. 300.320(b) and 300.324(c) and shall establish and implement appropriate policies, procedures, programs and services to promote successful post-secondary transitions for children with disabilities. Transition services for students 14-21 include the following.

(a) Transition services are a coordinated set of activities for a child with a disability that emphasizes special education and related services designed to meet unique needs and prepare them for future education, employment, and independent living.

(b) Transition services are designed to be within a results oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

(c) Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests and includes:

instruction;

related services;

community experiences;

the development of employment and other post-school adult living objectives; and

(v) when appropriate, acquisition of daily living skills and the provision of a functional vocational evaluation.

(d) Transition services for children with disabilities may be considered special education, if provided as individually designed instruction, aligned with the state standards with benchmarks, or related service, if required to assist a child with a disability to benefit from special education as provided in 34 CFR Sec. 300.43.

(3) State rules require the development of measurable post-school goals beginning not later than the first IEP to be in effect when the child turns 14, or younger, if determined appropriate by the IEP team, and updated annually thereafter. Pursuant to 34 CFR Sec. 300.320(b), the IEP shall include:

(a) appropriate measurable post-secondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;

(b) the transition services (including courses of study) needed to assist the child in reaching those goals; and

(c) a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority.

(4) Measurable post school goals refer to

goals the child seeks to achieve after high school graduation. The goals shall be measurable while the child is still in high school. In addition, the nature of these goals will be different depending on the needs, abilities, and wishes of each individual child.

(5) For a child whose eligibility terminates due to graduation from secondary school with a regular diploma or due to reaching the child's twenty-second birthday, the public agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's post-secondary goals pursuant to 34 CFR Sec. 300.305(e)(3).

(6) Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, that student shall be allowed to complete the school year and shall continue to receive special education and related services during that school year. If the student turns 22 prior to the first day of the school year, the student is no longer eligible to receive special education and related services.

H. Transfers and transmittals. When IEPs shall be in effect.

(1) IEPs for children who transfer public agencies in the same state. If a child with a disability (who had an IEP that was in effect in a previous public agency in New Mexico) transfers to a new public agency in New Mexico, and enrolls in a new school within the same school year the new public agency shall provide FAPE to the child. The IEP shall include services comparable to those described in the child's IEP from the previous public agency, until the new public agency either:

(a) adopts and implements the child's IEP from the previous public agency; or

(b) develops and implements a new IEP that meets the applicable requirements in 34 CFR Secs. 300.320 through 300.324.

(2) IEPs for children who transfer from another state. If a child with a disability (who had an IEP that was in effect in a previous public agency in another state) transfers to a public agency in New Mexico, and enrolls in a new school within the same school year, the new public agency shall provide the child with FAPE. The IEP shall include services comparable to those described in the child's IEP from the previous agency, until the new public agency:

(a) conducts an evaluation pursuant to 34 CFR Secs. 300.304 through 300.306 (if determined to be necessary by the new public agency); and

(b) develops and implements a new IEP, if appropriate, that meets the applicable requirements in 34 CFR Secs. 300.320 through 300.324.

(3) Transmittal records. To facilitate the transition for a child described in Paragraphs (1) and (2) of this section:

(a) the new public agency in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled; and

(b) the previous public agency in which the child was enrolled shall take reasonable steps to promptly respond to the request from the new public agency.

I. Children in charter schools.

(1) Pursuant to 34 CFR Sec. 300.209, children with disabilities who attend public charter schools and their parents retain all rights under Part B of IDEA.

(2) Charter schools that are public schools of the LEA:

(a) the LEA shall serve children with disabilities attending those charter

schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(b) the LEA shall provide funds under Part B of IDEA to those charter schools on the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities, and at the same time as the LEA distributes other federal funds to the LEA's other public schools, consistent with the state's charter school law; and

(c) if the public charter school is a school of an LEA that receives funding under 34 CFR Sec. 300.705 and includes other public schools:

(i) the LEA is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity; and

(ii) the LEA shall meet the requirements of Paragraph (2) of this subsection.

(3) Public charter schools that are LEAs. If the public charter school is an LEA, consistent with 34 CFR Sec. 300.28, that receives funding under 34 CFR Sec. 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless state law assigns that responsibility to some other entity. Charter schools who are LEAs authorized under the public education commission shall satisfy child find requirements for children enrolled in the charter school.

(4) Public charter schools that are not an LEA or a school that is part of an LEA.

(a) If the public charter school is not an LEA receiving funding under 34 CFR Sec. 300.705, or a school that is part

of an LEA receiving funding under 34 CFR Sec. 300.705, the department is responsible for ensuring that the requirements of this part are met.

(b) Subparagraph (a) of this paragraph does not preclude the governor from assigning initial responsibility for ensuring the requirements of this part are met to another entity, however, the department shall maintain the ultimate responsibility for ensuring compliance with this part, consistent with 34 CFR Sec. 300.149.

J. Children in state-supported educational programs.

(1) Children placed or referred by other public agencies.

(a) Applicability. The rules in this Paragraph (1) of Subsection J of 6.31.2.11 NMAC apply to children with disabilities who are being considered for placement in a state-supported educational program or facility by another public agency as a means of providing special education and related services.

(b) Responsibility. Each public agency shall ensure that a child with a disability who is being considered for placement in a state-supported educational program by another public agency has all the rights of a child with a disability who is served by any other public agency, including being provided special education and related services:

(i) in conformance with an IEP;

(ii) at no cost to the child's parents; and

(iii) at a school or facility that is accredited by the department or licensed by the New Mexico department of health.

(c) Service delivery. With informed parent consent pursuant to 34 CFR Sec. 300.300 and Subsection F of 6.31.2.13 NMAC, and pursuant to the procedures in 34 CFR Sec. 300.304 and Subsection D of 6.31.2.10 NMAC, the state-supported program may conduct such additional

evaluations and gather such additional information as it considers necessary to assist the IEP team in making the placement decision. The referring public agency and the receiving state-supported educational program shall be jointly responsible for developing IEPs and ensuring that the child receives a free appropriate public education.

(d) Joint IEPs and interagency agreements. Responsibility for services for children placed in or referred to state-supported educational programs shall be defined by a jointly agreed upon IEP or other written agreement between the referring public agency and the state-supported program.

(e) Annual review. At least annually, the referring public agency, the state-supported educational program, and the parent shall jointly review the child's IEP and revise it as the joint IEP team deems appropriate.

(2) Children enrolled in state-supported educational programs by parents or other public authorities. A state-supported educational program that accepts a child with a disability at the request of a parent or upon the request or order of a noneducational public authority, and without inviting the public agency that has primary responsibility for serving the child to participate in the IEP process, assumes all responsibility for ensuring the provision of FAPE. The child's LEA or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a joint IEP or other written agreement between the state-supported program, the other public agency and, if appropriate, the parent.

K. Children at the New Mexico School for the Deaf (NMSD).

(1) NMSD is a state educational agency established to provide educational services to persons who are 21 years of age or younger on the first day of school, who are deaf or hard of hearing, and who may have one or more other disabilities. The school serves as a

special school on the continuum of placement options. The school serves students who require specialized or intensive educational services or services related to hearing impairment or deafness. NMSD provides a variety of services to the students and school districts around the state, including outreach, consultation, and training services. NMSD also provides comprehensive services on a day or residential basis. The comprehensive day and residential programs are not intended to serve students whose needs are appropriately addressed in a group home or hospital setting or in a residential treatment facility.

(2) To be eligible to receive free services from NMSD, a student shall be deaf or hearing impaired as determined by an audiological evaluation and be a resident of New Mexico.

(3) The student's resident school district shall conduct child find, pursuant to 34 CFR Sec. 300.111 and Subsection A of 6.31.2.10 NMAC.

(4) In addition to the requirements of identification, evaluations, and eligibility determinations of students with disabilities pursuant to 6.31.2.10 NMAC and 34 CFR Secs. 300.100 through 300.230 and 300.300 through 300.328, if a student's resident school district finds, has reason to know, or receives documentation that a student is deaf, has a hearing impairment, or is deafblind, the following criteria shall apply

(a) the resident school district shall convene the initial IEP team meeting;

(b) the IEP team shall include members specified in Paragraph (11) of Subsection B of 6.31.2.7 NMAC, including staff from the NMSD if invited by the parent or the resident school district pursuant 34 CFR Sec. 300.321(a)(6);

(c) the resident school district shall provide the parents of the student with information on the continuum of alternative placements, including the

alternative placements listed in the definition of special education under 34 CFR Sec. 300.39 (instruction in regular classrooms, special classes, special schools, home instruction, and instruction in hospitals and institutions); and supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement;

(d) in addition to the requirements of Subsection B of 6.31.2.11 NMAC, the IEP team shall be tasked with:

(i) determining if the student has a hearing disability, which impacts the student's ability to access education, ability to develop language or communication, social emotional development, and/or overall development; and

(ii) determining the student's placement in the least restrictive environment, in compliance with 34 CFR Secs. 300.114 through 300.120 and Subsection C of 6.31.2.11 NMAC, which for the student may be an environment specifically designed for deaf and hard of hearing children, and whether this is the most appropriate setting in providing educational services and supports to meet the student's IEP.

(e) the student's placement, whether in the resident school district, NMSD, or other educational entity, is the entity that shall have full responsibility for FAPE and all services defined in the student's IEP unless the resident school district and NMSD agree to share services, responsibilities, and costs pursuant to 34 CFR Sec. 300.103; and

(f) the composition of the IEP team after a student's placement and service determinations shall:

(i) include a representative from the resident school district at the request of the parent, NMSD, or the resident school district if the final placement for the student is at NMSD; and

(ii) include a representative from NMSD at the request of the parent, the resident school district, or NMSD if the final placement for the student is at the resident school district or other educational entity.

L. Children at the New Mexico school for the blind and visually impaired (NMSBVI).

(1) NMSBVI is a state educational agency established to provide educational services for students who are 21 years of age or younger on the first day of school and who have a diagnosed visual impairment and who may have one or more other disabilities. The school serves as a special school on the continuum of placement options. The school serves students who require specialized or intensive educational services or services related to the visual impairment or blindness and those who need extensive training related to the expanded core curriculum for blind and visually impaired students. NMSBVI provides a variety of services to the students and school districts around the state, including outreach, consultation, and training services. NMSBVI also provides comprehensive services on a day or residential basis. The comprehensive day and residential programs are not intended to serve students whose needs are appropriately addressed in a group home or hospital setting or in a residential treatment facility.

(2) To be eligible to receive free services from the NMSBVI, a student shall have a visual impairment or blindness as determined by a medical eye exam and be a resident of New Mexico.

(3) The student's resident school district shall conduct child find, pursuant to 34 CFR Sec. 300.111 and Subsection A of 6.31.2.10 NMAC.

(4) In addition to the requirements of identification, evaluations, and eligibility determinations of students with disabilities pursuant to 6.31.2.10 NMAC and 34 CFR Secs. 300.100 through 300.230 and 300.300 through

300.328, if a student’s resident school district finds, has reason to know, or receives documentation that a student is blind, has a visual impairment, or is deafblind, the following criteria shall apply:

- (a) the resident school district shall convene the initial IEP team meeting;
- (b) the IEP team shall include members specified in Paragraph (11) of Subsection B of 6.31.2.7 NMAC, including staff from NMSBVI if invited by the parent or the resident school district pursuant 34 CFR Sec. 300.321(a)(6);
- (c) the resident school district shall provide the parents of the student with information on the continuum of alternative placements, including the alternative placements listed in the definition of special education under 34 CFR Sec. 300.39 (instruction in regular classrooms, special classes, special schools, home instruction, and instruction in hospitals and institutions); and supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement;
- (d) in addition to the requirements of Subsection B of 6.31.2.11 NMAC, the IEP team shall be tasked with:
 - (i) determining if the student has a visual disability, which impacts the student’s ability to access education, ability to develop language or communication, social emotional development, and/or overall development; and
 - (ii) determining the student’s placement in the least restrictive environment, in compliance with 34 CFR Secs. 300.114 through 300.120 and Subsection C of 6.31.2.11 NMAC, which for the student may be an environment specifically designed for blind or visually impaired children, and whether this is the most appropriate setting in providing educational services and supports to meet the student’s IEP.

(e) the student’s placement, whether in the resident school district, NMSBVI, or other educational entity, is the entity that shall have full responsibility for FAPE and all services defined in the student’s IEP unless the resident school district and NMSBVI agree to share services, responsibilities, and costs pursuant to 34 CFR Sec. 300.103; and

(f) the composition of the IEP team after a student’s placement and service determinations shall:

(i) include a representative from the resident school district at the request of the parent, NMSBVI, or the resident school district if the final placement for the student is at NMSBVI; and

(ii) include a representative from NMSBVI at the request of the parent, the resident school district, or NMSBVI if the final placement for the student is at the resident school district or other educational entity.

M. Children in detention and correctional facilities.

(1) If a child with a disability is placed in a juvenile or adult detention or correctional facility, the facility shall provide the child with FAPE after the facility learns that the child had been eligible for special education and related services in the last educational placement prior to incarceration or otherwise determines that the child is eligible.

(2) Juvenile or adult detention or correctional facilities shall take reasonable steps to obtain needed educational records from a child’s last known school or educational facility within two business days, as required under Section 22-13-33 NMSA 1978, of the child arriving at the juvenile or correctional facility. Record requests and transfers are subject to the rules under the Family Educational Rights and Privacy Act (FERPA) at 34 CFR Part 99 and the provisions of Paragraph (3) of Subsection L of 6.31.2.13 NMAC. The educational

program of a juvenile or adult detention or correctional facility is an educational agency for purposes of FERPA.

(a) The previous public agency in which the child was enrolled shall take reasonable steps to promptly respond to the records request from the juvenile correctional facilities.

(b) To assist juvenile correctional facilities in providing FAPE for children entering the facility during the summer months, school districts shall provide summer emergency contact information of a person who has access to special education records, to the state’s directors in the juvenile justice services division of the children, youth, and family department.

(3) A detention or correctional facility that is unable to obtain adequate records from other public agencies, the child or the parents within the required two business days, as required under Section 22-13-33 NMSA 1978, after the child arrives at the facility, shall evaluate the child who is known or suspected to be a child with a disability as provided in Subsection F of 6.31.2.10 NMAC and develop an IEP for an eligible child without undue delay.

(4) FAPE for eligible students in juvenile or adult detention or correctional facilities shall be made available in programs that are suited to the security requirements of each facility and eligible student. The provisions of 34 CFR Sec. 300.324(d) apply to IEPs for students with disabilities who are convicted as adults under state law and incarcerated in adult prisons.

(5) A state-supported educational program that serves a juvenile or adult detention or correctional facility shall be responsible for ensuring that FAPE is provided to eligible children in that facility.

(6) The local school district in which a detention or correctional facility is located (that is not served by a state-supported

educational program) shall be responsible for ensuring that FAPE is made available to eligible children in that facility. A child's LEA of residence or another public agency with educational jurisdiction may agree to share the responsibility pursuant to a written agreement between or among the public agencies involved.

(7) Children with disabilities who are detained or incarcerated in detention or correctional facilities are wards of the state and may have surrogate parents appointed pursuant to 34 CFR Sec. 300.519 and Subsection J of 6.31.2.13 NMAC to protect their rights under IDEA while in state custody.

(8) The public agency that administers the educational program in a juvenile or adult detention or correctional facility shall ensure that surrogate parents are appointed in cases where no parent as defined in 34 CFR Sec. 300.30(a) and Paragraph (14) of Subsection B of 6.31.2.7 NMAC is reasonably available or willing to make the educational decisions required for children with disabilities who are housed in that facility.

(9) Children placed in juvenile or adult detention or correctional facilities shall be provided learning opportunities and instruction that meet the state standards with benchmarks.

N. Children in private schools or facilities.

(1) Children enrolled by parents in private schools or facilities.

(a) Parentally placed private school children with disabilities means children with disabilities enrolled by their parents in private schools, including religious schools or facilities, such as residential treatment centers, day treatment centers, hospitals, and mental health institutions, that include other children with disabilities who are covered under 34 CFR Secs. 300.145 through 300.147.

(b) A school district in which a private

school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

(c) Each LEA shall locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private schools, including religious elementary schools and secondary schools located in the education jurisdiction of the LEA, in accordance with 34 CFR Secs. 300.131 and 300.111.

(d) Each public agency shall develop a "service plan" that describes the special education and related services the LEA will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, consistent with 34 CFR Sec. 300.132 and that is developed and implemented in accordance with 34 CFR Secs. 300.137 through 300.139. The provision applies only to private schools and not to private facilities where an IEP shall be in place.

(e) Pursuant to 34 CFR Sec. 300.133, each LEA is obligated to spend a proportionate amount of its federal IDEA-Part B funds to assist private school children with disabilities placed in a private school or private facility by a parent who assumes responsibility for such placement. In doing so, LEAs shall use the formula for calculating proportionate amount and annual count of parentally placed private school children with disabilities in accordance with 34 CFR Sec. 300.133. The public agency shall not use IDEA funds to benefit private schools as provided in 34 CFR Sec. 300.141. The state is not required to distribute state funds for such school-age persons. Furthermore, the constitution and laws of New Mexico prohibit public agencies from spending state funds to

assist private schools or facilities or their students.

(f) No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Pursuant to 34 CFR Sec. 300.137, the LEA shall make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.

(g) Pursuant to 34 CFR Secs. 300.134 and 300.135, LEAs shall ensure timely and meaningful consultation with private school representatives and representatives of parents of parentally placed private school children with disabilities. If the LEA fails to engage in meaningful and timely consultation or did not give due consideration to a request from private school officials, private school officials have the right to submit a complaint to the department. The private school official and the LEA shall follow the procedures outlined in 34 CFR Sec. 300.136.

(h) Pursuant to 34 CFR Secs. 300.140, the due process provisions of Subsection I of 6.31.2.13 NMAC are not applicable except for child find complaints which shall be filed in compliance with 34 CFR Sec. 300.140(b). Any complaint that the department or any LEA has failed to meet the requirements in 34 CFR Secs. 300.132 through 300.135 and 300.137 through 300.144 shall be filed in accordance with the provisions described in Subsection H of 6.31.2.13 NMAC.

(2) Children placed in or referred to private schools or facilities by New Mexico public agencies. Each public agency shall ensure that a child with a disability who is placed in or referred to a private school or facility by the public agency as a means of providing special education and related services is provided services in compliance with the requirements of 34 CFR Secs. 300.146 and 300.147. Such a

child has all the rights of a child with a disability who is served by a public agency.

(3) Children placed in or referred to private schools or facilities by New Mexico public non-educational agencies. For a qualified student or school-age person in need of special education placed in a private school or facility by a New Mexico public noneducational agency with custody or control of the qualified student or school-age person or by a New Mexico court of competent jurisdiction, the school district in which the facility is located shall be responsible for the planning and delivery of special education and related services, unless the qualified student's or school-age person's resident school district has an agreement with the facility to provide such services. The school district shall make reasonable efforts to involve the qualified student or school-age person's resident school district in the IEP process.

(4) Children placed in or referred to private schools or facilities by public noneducational agencies other than New Mexico public agencies. A school district in which a private school or facility is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

(5) Children placed in private schools or facilities by parents when FAPE is at issue. The responsibility of a local educational agency to pay for the cost of education for a child with a disability who is placed in a private school or facility such as residential treatment centers, day treatment centers, hospitals or mental health institutions, by parents who allege that the LEA failed to offer FAPE is governed by the requirements of 34 CFR Sec. 300.148. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial

responsibility, are subject to the due process procedures of Subsection I of 6.31.2.13 NMAC.

(6) If not otherwise governed by this rule, the department will determine which school district is responsible for the cost of educating a qualified student in need of special education who has been placed in a private school or facility outside the qualified student's resident school district in accordance with the following procedures.

(a) The receiving school district shall notify the SED of the department in writing no later than 30 days after the receiving school district receives notice of the placement. The notice, as described on the department's website, shall include: name of student, date of birth of student, date of placement, information regarding the qualified student's resident school district, documentation of placement, including student's IEP, cost of placement, and any other information deemed relevant by the SED. The receiving school district shall provide a copy of the notice to the school district identified as the student's resident school district.

(b) The school district identified as the student's resident school district may provide any additional information it deems relevant. Such additional information shall be provided no later than 15 days after the resident school district receives its copy of the notice described in Subparagraph (a) of this paragraph.

(c) No later than 60 days after its receipt of the notice described in Subparagraph (a) of this paragraph, the SED will issue its determination as to which school district is responsible for the cost of educating the student, together with the amount of any reasonable reimbursement owed to the receiving school district. The SED may extend the 60 day timeline for good cause.

(7) The department shall assign a unique student identifier for school-age persons who have service plans,

including those who are not residents of the state but who are attending private residential treatment facilities in the state.

(8) Children schooled at home. Each LEA shall locate, evaluate, and determine the eligibility of children with disabilities who are schooled at home pursuant to Subsection H of Section 22-2-2 NMSA 1978. [6.31.2.11 NMAC - Rp, 6.31.2.11 NMAC, 7/14/2020]

6.31.2.12 EDUCATIONAL SERVICES FOR GIFTED CHILDREN:

A. Evaluation procedures for gifted children.

(1) Each school district shall establish a child find procedure that includes a screening and referral process for students in public schools who may be gifted.

(2) Analysis of data. The identification of a student as gifted shall include documentation and analysis of data from multiple sources for subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking including:

(a) standardized measures, as specified in Subsection B of 6.31.2.12 NMAC, and

(b) information regarding the child's abilities from other sources, such as collections of work, audio/visual tapes, judgment of work by qualified individuals knowledgeable about the child's performance (e.g., artists, musicians, poets, and historians, etc.), interviews, or observations.

(3) The child's ability shall be assessed in all four areas specified in Subsection B of 6.31.2.12 NMAC.

B. Standard method for identification. Under the standard method for identification, students will be evaluated in the areas of intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking. A student

who meets the criteria established in Subsection B of 6.31.2.12 for intellectual ability and also meets the criteria in one or more of the other areas will qualify for consideration of service. A properly constituted IEP team, including someone who has knowledge of gifted education, will determine if services are required to meet the child's educational needs.

C. Alternative method for identification.

(1) A school district may apply to the department to utilize an alternative protocol for all students. Eligibility of a student will then be determined by a properly administered and collected, department-approved alternative protocol designed to evaluate a student's intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking.

(2) If an accurate assessment of a child's ability may be affected by factors including cultural background, linguistic background, English language proficiency level, socioeconomic status, or disability condition(s), an alternative protocol as described in Paragraph (1) of Subsection E of 6.31.2.12 NMAC will be used in all school districts to determine the student's eligibility. The impact of these factors shall be documented by the person(s) administering the alternative protocol.

(3) The student assistance team (SAT) process requirements will not apply to students who meet the criteria established by the alternative protocols. When a student's overall demonstrated abilities are very superior (as defined by the alternative protocol author), a properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs.

D. Applicability of rules to gifted children.

(1) All definitions, policies, procedures, assurances, procedural safeguards,

and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the school district, except:

(a) the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC;

(b) Subsections J, K, and L of 6.31.2.11 NMAC regarding child find, evaluations, and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities, and children with disabilities who are schooled at home;

(c) the requirements of 34 CFR Secs. 300.530 through 300.536, Subsection I of 6.31.2.13 NMAC, and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and

(d) the requirements of 34 CFR Secs. 300.43 and 300.320(b) and Paragraph (2) of Subsection G of 6.31.2.11 NMAC regarding transition planning. Students identified as gifted shall meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is the next step plan for students without disabilities.

(2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section, 6.31.2.12 NMAC, apply only to gifted children.

(3) Nothing in these rules shall preclude a school district or a charter school within a school district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the state shall only provide funds under Section 22-8-21 NMSA 1978 for department-approved gifted programs for those students who meet the established criteria.

E. Advisory committees.

(1) Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students, and school staff members. The school district may create as many advisory committees as there are high schools in the school district or may create a district-wide advisory committee.

(2) The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the advisory committee advises. Representation from all schools the committee is advising is required.

(3) Purposes. The advisory committee shall:

(a) regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement, and service delivery;

(b) demonstrate support for the gifted program;

(c) provide information regarding the impact that cultural background, linguistic background, socioeconomic status, and disability conditions within the community may have on the child referral, identification, evaluation, and service delivery processes;

(d) advocate for children who have been underrepresented in gifted services due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these children have equal opportunities to benefit from services for gifted students; and

(e) meet three or more times per year at regular intervals.

(4) Formal documentation of committee membership, activities, and recommendations shall be maintained. If proposals are made by the committee to address any of the purposes as listed in Paragraph (3) of

Subsection G of 6.31.2.12 NMAC, they shall be submitted in writing to the school district administration. The school district administration shall respond in writing to any proposed actions before the next scheduled meeting of the advisory committee. [6.31.2.12 NMAC - Rp, 6.31.2.12 NMAC, 7/14/2020]

6.31.2.13 ADDITIONAL RIGHTS OF PARENTS, STUDENTS, AND PUBLIC AGENCIES:

A. General responsibilities of public agencies. Each public agency shall establish, implement, and maintain procedural safeguards that meet the requirements of 34 CFR Secs. 300.500 through 300.536, and all other applicable requirements of these or other department rules and standards.

B. Examination of records. Each public agency shall afford the parents of a child with a disability an opportunity to inspect and review all education records related to the child in compliance with 34 CFR Secs. 300.501(a), 300.613 through 300.620, 34 CFR Part 99, and any other applicable requirements of these or other department rules and standards.

C. Parent and student participation in meetings. Each public agency shall afford the parents of a child with a disability and, as appropriate, the child, an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement or the provision of FAPE to the child, in compliance with 34 CFR Secs. 300.322, 300.501(b), 300.501(c), and any other applicable requirements of these or other department rules and standards.

D. Notice requirements.

(1) Notice of meetings. Each public agency shall provide the parents of a child with a disability with advance written notice that complies with 34 CFR Sec. 300.322 for IEP meetings and any other meetings in which the parent has a right to participate pursuant to 34 CFR Sec. 300.501.

(2) Notice of agency actions proposed or refused. A public agency shall give written notice that meets the requirements of 34 CFR Sec. 300.503 to the parents of a child with a disability a reasonable time before the agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. If the notice relates to a proposed action that also requires parental consent under 34 CFR Sec. 300.300, the public agency may give notice at the same time it requests parental consent.

(3) Notice of procedural safeguards. A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents, only one time a school year, except that a copy shall be given to the parents: (a) upon initial referral for evaluation; (b) upon receipt of the first state complaint under 34 CFR Secs. 300.151 through 300.153; (c) upon receipt of the first due process complaint under 34 CFR Sec. 300.507 of the school year; (d) in accordance with the discipline procedures in 34 CFR Sec. 300.530(h); and (e) upon request of the parents. The notice shall meet all requirements of 34 CFR Sec. 300.504, including the requirement to inform the parents of their obligation under 34 CFR Sec. 300.148 to notify the public agency if they intend to enroll the child in a private school or facility and seek reimbursement from the public agency. A public agency may place a current copy of the procedural safeguards notice on its internet website if a website exists.

E. Communications in understandable language. Pursuant to 34 CFR Secs. 300.9(a), 300.322(e), 300.503(c), and 300.504(d), each public agency shall communicate with parents in understandable language, including the parent's native language or other mode of communication, unless it is clearly not feasible to do so, if necessary for understanding, in IEP meetings, in written notices, and in obtaining consent where consent is required.

F. Parental consent.
(1) Informed parental consent as defined in 34 CFR Sec. 300.9 shall be obtained in compliance with 34 CFR Sec. 300.300 before: (a) conducting an initial evaluation or reevaluation; and (b) initial provision of special education and related services to a child with a disability. Consent for initial evaluation shall not be construed as consent for initial provision of special education and related services. If parental consent is not provided for the initial evaluation or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC.

(2) Pursuant to 34 CFR Sec. 300.300(d)(1), parental consent is not required before: (a) reviewing existing data as part of an evaluation or a reevaluation; or (b) administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(3) Pursuant to 34 CFR Sec. 300.300(b), if the parents of a child with a disability refuse consent for the initial provision of special education and related services, the public agency may not use the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC in order to obtain agreement or a ruling that the services may be provided to the child. If the parent refuses consent or fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency will not be considered to be in violation of the requirement to make FAPE available to the child and is not required to convene an IEP team meeting or develop an IEP under 34 CFR Secs. 300.320 and 300.324. All provisions of 34 CFR Sec. 300.300 shall be followed with respect to parental consent.

(4) Pursuant to 34 CFR Sec. 300.300(c)(2), informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent by using procedures consistent with those in 34 CFR Sec. 300.322(d) and the child's parent has failed to respond.

(5) Pursuant to 34 CFR Sec. 300.300(d)(3), a public agency may not use a parent's refusal to consent to one service or activity for which consent is required to deny the parent or child any other service, benefit, or activity of the public agency, except as required by 34 CFR Part 300.

(6) Pursuant to 34 CFR Sec. 300.300(b)(4), parents may revoke consent for the continued provision of all special education and related services for their child. The revocation of consent shall be in writing. After providing prior written notice in accordance with 34 CFR Sec. 300.503, the public agency shall cease the provision of special education and related services for that child. The public agency may not use the due process and mediation procedures in Subsection I of 6.31.2.13 NMAC in order to obtain agreement or a ruling that services may be provided to the child. The public agency will not be considered to be in violation of the requirement to make FAPE available to the child once consent has been revoked. The public agency will also not be required to convene an IEP team meeting or develop an IEP for the child for further provision of special education and related services.

G. Conflict management and resolution.

(1) Each public agency shall seek to establish and maintain productive working relationships with the parents of each child the public agency serves and to deal constructively with disagreements. Each public agency is strongly encouraged to provide appropriate training for staff and parents in skills and techniques of conflict prevention and management

and dispute resolution and to utilize an informal dispute resolution method as set forth under Subparagraph (a) of Paragraph (2) of Subsection G of 6.31.2.13 NMAC to resolve disagreements at the local level whenever practicable.

(2) Spectrum of dispute resolution options. To facilitate dispute prevention as well as swift, early conflict resolution whenever possible, the department and the public agency shall ensure that the following range of dispute resolution options is available to parents and public agency personnel.

(a) Informal dispute resolution option. If a disagreement arises between parents and a public agency over a student's IEP or educational program, either the parents or the public agency may convene a new IEP meeting at any time to attempt to resolve their differences at the local level without state-level intervention.

(b) Third-party assisted intervention. The special education division (SED) of the department will ensure that mediation is available to parents and public agencies who request such third-party assisted intervention before filing a state-level complaint or a request for a due process hearing. The SED will honor a request for mediation that:

- (i) is in writing;
- (ii) is submitted to the SED;
- (iii) is a mutual request signed by both parties or their designated representatives;
- (iv) includes a statement of the matter(s) in dispute and a description of any previous attempts to resolve these matters at the local level; and
- (v) any request that does not contain all of these elements will be declined, with an explanation for the SED's decision and further guidance, as appropriate.

(c) Formal dispute resolution.

(i) A state-level complaint may be filed with the SED of the department by the parents of a child, or by another individual or organization on behalf of a child, as described under Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC. Once a complaint has been filed, the parties may agree to convene a FIEP meeting or mediation as described under Paragraph (3) of Subsection H of 6.31.2.13 NMAC.

(ii) A request for a due process hearing may be filed by parents or their authorized representative, or by a public agency, as described under Paragraph (5) of Subsection I of 6.31.2.13 NMAC. A resolution session between the parties shall be convened by the public agency following a request for a due process hearing, unless the parties agree in writing to waive that option or to convene a mediation instead, as described under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

(d) The Mediation Procedures Act, Section 44-7B-1 et seq. NMSA 1978, does not apply to mediations conducted under 6.31.2 NMAC.

H. State complaint procedures.

(1) Scope and dissemination.

(a) Subsection H of 6.31.2.13 NMAC prescribes procedures to be used in filing and processing complaints alleging the failure of the department or a public agency to comply with state or federal laws or rules governing programs for children with disabilities under IDEA or with state laws or rules governing educational services for gifted children.

(b) The SED shall disseminate information regarding state complaint procedures to parents and other interested individuals and organizations, as identified by the SED, including parent centers, information centers, advocacy agencies, independent living centers, and other appropriate entities throughout the state.

<p>The SED shall place documents regarding state complaint procedures in English and Spanish, including state complaint forms, in an easily accessible location on the SED website.</p>	<p>(i) SED’s decision and further guidance, as appropriate.</p>	<p>(ii) Any mediated agreement shall state that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. Any such agreement shall also be signed by both the parent and a representative of the public agency who has the authority to bind such public agency, and shall be enforceable in any state court of competent jurisdiction or in a district court of the United States.</p>
<p>The SED shall, on a yearly basis, send an email to the organizations and individuals identified in Subparagraph (b) of Paragraph (1) of Subsection H of 6.31.2.13 NMAC providing information regarding state complaint procedures and encouraging these organizations and individuals to post a link to the SED website on their website.</p>	<p>(ii) If the complaint alleges violations with respect to a specific child, the complaint shall include the information required by 34 CFR 300.153(b)(4).</p> <p>(c) The party filing the complaint shall forward a copy of the complaint to the public agency serving the child at the same time the party files the complaint with the SED of the department.</p>	<p>(iii) If a mediated agreement involves IEP-related issues, the agreement shall state that the public agency will subsequently convene an IEP meeting to inform the student’s service providers of their responsibilities under that agreement, and revise the student’s IEP accordingly.</p>
<p>Upon request by any individual or organization, the SED shall provide the information regarding state complaint procedures, as posted on the SED’s website, in print or electronic form.</p>	<p>(d) Pursuant to 34 CFR Sec. 300.153(c), the complaint shall allege a violation that occurred not more than one year before the date the complaint is received by the SED in accordance with Subparagraph (a) of Paragraph (2) of Subsection H of 6.31.2.13 NMAC.</p>	<p>(iv) The mediator shall transmit a copy of the written mediation agreement to each party within seven days of the meeting at which the agreement was concluded. A mediation agreement involving a claim or issue that later goes to a due process hearing may be received in evidence if the hearing officer rules that part or all of the agreement is relevant to one or more IDEA issues that are properly before the hearing officer for decision.</p>
<p>(2) Requirements for complaints.</p>	<p>(3) Preliminary meeting.</p>	<p>(v) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.</p>
<p>(a) The SED of the department shall accept and investigate complaints from organizations or individuals that raise issues within the scope of this procedure as defined in the preceding Paragraph (1) of Subsection H of 6.31.2.13 NMAC. The complaint shall: (i) be in writing; (ii) be submitted to the SED (or to the secretary of education, in the case of a complaint against the department); (iii) be signed by the complainant or a designated representative and have the complainant’s contact information; (iv) if alleging violations with respect to a specific child, include the name and address of the child and the school the child is attending; (v) include a statement that the department or a public agency has violated a requirement of an applicable state or federal law or rules; (vi) contain a statement of the facts on which the allegation of violation is based; and (vii) include a description of a proposed resolution of the problem to the extent known. Any complaint that does not contain each of these elements will be declined, with an explanation for the</p>	<p>(a) FIEP meeting: mediation. Parties to a state-level complaint may choose to convene a FIEP meeting or mediation. To do so, the public agency shall (and the parent may) notify the SED of the department in writing within one business day of reaching their decision to jointly request one of these ADR options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SED, unless a brief extension is granted by the SED based on exceptional circumstances. Each session in the FIEP or mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the complaint.</p> <p>(b) Mediation requirements. If the parties choose to use mediation, the following requirements apply.</p> <p>(i) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.</p>	<p>(vi) Any other requirement provided in 34 CFR 300.506(b) that is not otherwise provided herein.</p> <p>(4) Complaints and due process hearings on the same issues, which are pursuant to 34 CFR Sec. 300.152(c).</p> <p>(a) The SED of the department shall set aside any part of a written complaint that is also the subject of a due process hearing under Subsection I of 6.31.2.13 NMAC until the conclusion of the hearing and any civil action.</p>

Any issue in the complaint that is not a part of the due process hearing or civil action will be resolved by the SED as provided in Subsection H of 6.31.2.13 NMAC.

(b)

If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the SED shall inform the complainant to that effect.

(c) A

complaint alleging a public agency's failure to implement a due process decision will be resolved by the SED as provided in this Subsection H of 6.31.2.13 NMAC.

(5) Complaints against public agencies.

(a)

Impartial review. Upon receipt of a complaint that meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC, the SED of the department shall:

(i)

undertake an impartial investigation which shall include complete review of all documentation presented and may include an independent on-site investigation, if determined necessary by the SED;

(ii)

give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(iii)

provide the public agency with the opportunity to respond to the allegations in the complaint; and

(iv)

review all relevant information and make an independent determination as to whether the public agency is violating a requirement of an applicable state or federal law or rule.

(b)

Decision. A written decision which includes findings of fact, conclusions, and the reasons for the decision and which addresses each allegation in the complaint shall be issued by the SED and mailed to the parties within 60 days of receipt of the written complaint, regardless of whether or not the

parties agree to convene a FIEP meeting or mediation. Such decision shall further include procedures for effective implementation of the final decision, if needed, including technical assistance, negotiations, and if corrective action is required, such action shall be designated and shall include the timeline for correction and the possible consequences for continued noncompliance.

(c)

Failure or refusal to comply. If the public agency fails or refuses to comply with the applicable law or rules, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the department by any means authorized by state or federal laws or rules. The department shall retain jurisdiction over the issue of noncompliance with the law or rules and shall retain jurisdiction over the implementation of any corrective action required.

(6) Complaints

against the department. If the complaint concerns a violation by the department and: is submitted in writing to the secretary of education; is signed by the complainant or a designated representative; includes a statement that the department has violated a requirement of an applicable state or federal law or rule; contains a statement of facts on which the allegation of violation is based, and otherwise meets the requirements of Paragraph (2) of Subsection H of 6.31.2.13 NMAC, the secretary of education or designee shall appoint an impartial person or impartial persons to conduct an investigation.

(a)

Investigation. The person or persons appointed shall: acknowledge receipt of the complaint in writing; undertake an impartial investigation which shall include a complete review of all documentation presented and may include an independent onsite investigation, if necessary; give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; provide the department with the opportunity to respond to the

complaint; and review all relevant information and make an independent determination as to whether the department is violating a requirement of an applicable state or federal law or rule.

(b)

Decision. A written decision, including findings of fact, conclusions, recommendations for corrective action, and the reasons for the decision and addressing each allegation in the complaint, shall be issued by the person or people appointed pursuant to this paragraph and mailed to the parties within 60 days of receipt of the written complaint. The person or people appointed pursuant to this paragraph has no authority to order rulemaking by the department.

(7) Extension

of time limit. An extension of the time limit under Subparagraph (b) of Paragraph (5) or Subparagraph (b) of Paragraph (6) of this Subsection H of 6.31.2.13 NMAC shall be permitted by the SED of the department only if exceptional circumstances exist with respect to a particular complaint or if the parent or any other party filing a complaint and the public agency involved agree to extend the time to engage in mediation or a FIEP meeting.

(8) Conflicts

with federal laws or rules. If any federal law or rule governing any federal program subject to this rule affords procedural rights to a complainant which exceed those set forth in Subsection H of 6.31.2.13 NMAC for complaints within the scope of these rules, such statutory or regulatory right(s) shall be afforded to the complainant. In acknowledging receipt of such a complaint, the SED shall set forth the procedures applicable to that complaint.

I. Due process

hearings.

(1) Scope.

Subsection I of 6.31.2.13 NMAC establishes procedures governing impartial due process hearings for the following types of cases:

(a)

requests for due process in IDEA

cases governed by 34 CFR Secs. 300.506 through 300.518 and 300.530 through 300.532; and

(b) claims for gifted services.
(2) Bases for requesting hearing. A parent or public agency may initiate an impartial due process hearing on the following matters:

(a) the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;

(b) the public agency refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;

(c) the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of, or services to, a child who needs or may need gifted services.

(3) Bases for requesting expedited hearing.

(a) Pursuant to 34 CFR Sec. 300.532 and 20 USC Sec. 1415(k)(3), a parent may request an expedited hearing to review any decision regarding placement or a manifestation determination under 34 CFR Secs. 300.530 through 300.531.

(b) Pursuant to 34 CFR Sec. 300.532(c) and 20 USC Sec. 1415(k)(3), a public agency may request an expedited hearing if it believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others.

(4) Request for hearing. A parent requesting a due process hearing shall transmit written notice of the request to the public agency whose actions are in question and to the SED of the department. A public agency requesting a due process hearing shall transmit written notice of the request to the parent(s) and to the SED of the department. The written request shall state with specificity the nature of the dispute and shall include:

(a) the name of the child;

(b) the address of the residence of the child (or available contact information in the case of a homeless child);

(c) the name of the school the child is attending;

(d) the name of the public agency, if known;

(e) the name and address of the party making the request (or available contact information in the case of a homeless party);

(f) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem;

(g) a proposed resolution of the problem to the extent known and available to the party requesting the hearing at the time;

(h) a request for an expedited hearing shall also include a statement of facts sufficient to show that a requesting parent or public agency is entitled to an expedited hearing under 34 CFR Secs. 300.532(c) or 20 USC Sec. 1415(k)(3);

(i) a request for a hearing shall be in writing and signed and dated by the parent or the authorized public agency representative; an oral request made by a parent who is unable to communicate by writing shall be reduced to writing by the public agency and signed by the parent;

(j) a request for hearing filed by or on behalf of a party who is represented by an attorney shall include a sufficient statement authorizing the representation; a written statement on a client's behalf that is signed by an attorney who is subject to discipline by the New Mexico supreme court for a misrepresentation shall constitute a sufficient authorization; and

(k) a party may not have a hearing on

a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this paragraph.

(5) Response to request for hearing.

(a) A request for a hearing shall be deemed to be sufficient unless the party receiving the notice of request notifies the hearing officer and the other party in writing that the receiving party believes the request has not met the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC.

(b) Public agency response.

(i) In general. If the public agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process hearing request, such public agency shall, within 10 days of its receipt of the request, send to the parent a response that meets the requirements of 34 CFR Sec. 300.508(e) and 20 USC Sec. 1415(c)(2)(B)(i). This requirement presents an additional opportunity for parties to clarify and potentially resolve their dispute(s).

(ii) Sufficiency. A response filed by a public agency pursuant to Item (i) of Subparagraph (b) of Paragraph (6) shall not be construed to preclude such public agency from asserting that the parent's due process hearing request was insufficient where appropriate.

(c) Other party response. Except as provided in Subparagraph (b) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC, the non-complaining party shall, within 10 days of its receipt of the request for due process, send to the requesting party a response that specifically addresses the issues raised in the hearing request. This requirement also presents an opportunity to clarify and potentially resolve disputed issues between the parties.

(d) A party against whom a due process hearing request is filed shall have a

maximum of 15 days after receiving the request to provide written notification to the hearing officer of insufficiency under Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC. The 15-day timeline for the public agency to convene a resolution session under Paragraph (8) of Subsection I of 6.31.2.13 NMAC runs at the same time as the 15-day timeline for filing notice of insufficiency.

(e)

Determination. Within five days of receipt of a notice of insufficiency under Subparagraph (d) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC, the hearing officer shall make a determination on the face of the due process request of whether it meets the requirements of Paragraph (5) of Subsection I of 6.31.2.13 NMAC and shall immediately notify the parties in writing of such determination.

(f)

Amended due process request. A party may amend its due process request only if:

(i)

the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to Paragraph (8) of Subsection I of 6.31.2.13 NMAC; or

(ii)

the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than five days before a due process hearing occurs.

(g)

Applicable timeline. The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

(6) Duties of

the SED of the department. Upon receipt of a written request for due process, the SED shall:

(a)

appoint a qualified and impartial hearing officer who meets the requirements of 34 CFR Sec. 300.511(c) and 20 USC Sec. 1415(f)(3)(A);

(b)

arrange for the appointment of a qualified and impartial mediator or IEP facilitator pursuant to 34 CFR Sec. 300.506 to offer ADR services to the parties;

(c)

inform the parent in writing of any free or low-cost legal and other relevant services available in the area; the SED shall also make this information available whenever requested by a parent; and

(d)

inform the parent that in any action or proceeding brought under 20 USC Sec. 1415, a state or federal court, in its discretion and subject to the further provisions of 20 USC Sec. 1415(g)(3)(b) and 34 CFR Sec. 300.517, may award reasonable attorneys' fees as part of the costs to a prevailing party;

(e)

the SED shall also:

(i)

keep a list of the persons who serve as hearing officers and a statement of their qualifications;

(ii)

appoint another hearing officer if the initially appointed hearing officer excuses himself or herself from service;

(iii)

ensure that mediation and FIEP meetings are considered as voluntary and are not used to deny or delay a parent's right to a hearing; and

(iv)

ensure that within 45 days of commencement of the timeline for a due process hearing, a final written decision is reached and a copy transmitted to the parties, unless one or more specific extensions of time have been granted by the hearing officer at the request of either party (or at the joint request of the parties, where the reason for the request is to allow the parties to pursue an ADR option); and

(f)

following the decision, the SED shall, after deleting any personally identifiable information, transmit the findings and decision to the state IDEA advisory panel and make them available to the public upon request.

(7)

Preliminary meeting.

(a)

Resolution session. Before the opportunity for an impartial due process hearing under Paragraphs (3) or (4) of Subsection I of 6.31.2.13 NMAC, the public agency shall convene a resolution session with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process request, unless the parents and the public agency agree in writing to waive such a meeting, or agree to use the mediation process instead. The resolution session:

(i)

shall occur within 15 days of the respondent's receipt of a request for due process;

(ii)

shall include a representative of the public agency who has decision-making authority on behalf of that public agency;

(iii)

may not include an attorney of the public agency unless the parent is accompanied by an attorney; and

(iv)

shall provide an opportunity for the parents of the child and the public agency to discuss the disputed issue(s) and the facts that form the basis of the dispute, in order to attempt to resolve the dispute;

(v)

if the parties desire to have their discussions in the resolution session remain confidential, they may agree in writing to maintain the confidentiality of all discussions and that such discussions cannot later be used as evidence in the due process hearing or any other proceeding; and

(vi)

if an agreement is reached following a resolution session, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the public agency who has the authority to bind that public agency, and which is enforceable in any state court of competent jurisdiction or in a district court of the United States; if the

parties execute an agreement pursuant to a resolution session, a party may void this agreement within three business days of the agreement’s execution; further, if the resolution session participants reach agreement on any IEP-related matters, the binding agreement shall state that the public agency will subsequently convene an IEP meeting to inform the student’s service providers of their responsibilities under that agreement and revise the student’s IEP accordingly.

(b)

FIEP meeting; mediation. Parties to a due process hearing may choose to convene a FIEP meeting or mediation instead of a resolution session. To do so, the party filing the request for the hearing shall (and the responding party may) notify the hearing officer in writing within one business day of the parties’ decision to jointly request one of these options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SED, unless, upon joint request by the parties, an extension is granted by the hearing officer. Each session in the FIEP or mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the hearing. The requirements for mediation, as set forth at Subparagraph (c) of Paragraph (3) of Subsection H of 6.31.2.13 NMAC apply to mediation in this context as well.

(c)

Applicable timelines.

(i)

If the parties agree to convene a resolution session, the applicable timelines for the due process hearing shall be suspended for up to 30 days from the date the due process request was received by the SED (except in the case of an expedited hearing), and the meeting shall proceed according to the requirements set forth under Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC.

(ii)

If the parties agree to convene a FIEP meeting or mediation, the public

agency shall contact the person or entity identified by the SED to arrange for mediation or a FIEP meeting, as appropriate. Except for expedited hearings, the parties to the FIEP meeting or mediation process may jointly request that the hearing officer grant a specific extension of time for the prehearing conference and for completion of the hearing beyond the 45 day period for issuance of the hearing decision. The hearing officer may grant such extensions in a regular case but may not exceed the 20 school day deadline in an expedited case.

(iii)

If the parties agree to waive all preliminary meeting options and proceed with the due process hearing, the hearing officer shall send written notification to the parties that the applicable timelines for the due process hearing procedure shall commence as of the date of that notice. The hearing officer shall thereafter proceed with the prehearing procedures, as set forth under Paragraph (12) of Subsection I of 6.31.2.13 NMAC.

(d)

Resolution. Upon resolution of the dispute, the party who requested the due process hearing shall transmit a written notice informing the hearing officer and the SED that the matter has been resolved and withdraw the request for hearing. The hearing officer shall transmit an appropriate order of dismissal to the parties and the SED.

(e)

Hearing. If the parties convene a resolution session and they have not resolved the disputed issue(s) within 30 days of the receipt of the due process request by the SED in a non-expedited case, the public agency shall (and the parents may) notify the hearing officer in writing within one business day of reaching this outcome. The hearing officer shall then promptly notify the parties in writing that the due process hearing shall proceed and all applicable timelines for a hearing under this part shall commence as of the date of such notice.

(f)

Further adjustments to the timelines may be made as provided in 34 CFR Secs. 300.510(b) and 300.510(c).

(g)

The resolution of disputes by mutual agreement is strongly encouraged and nothing in these rules shall be interpreted as prohibiting the parties from engaging in settlement discussions at any time before, during, or after an ADR meeting, a due process hearing, or a civil action.

(8) Hearing

officer responsibility and authority. Hearing officers shall conduct proceedings under these rules with due regard for the costs and other burdens of due process proceedings for public agencies, parents, and students. In that regard, hearing officers shall strive to maintain a reasonable balance between affording parties a fair opportunity to vindicate their IDEA rights and the financial and human costs of the proceedings to all concerned. Accordingly, each hearing officer shall exercise such control over the parties, proceedings, and the hearing officer’s own practices as the hearing officer deems appropriate to further those ends under the circumstances of each case. In particular, and without limiting the generality of the foregoing, the hearing officer, at the request of a party or upon the hearing officer’s own initiative and after the parties have had a reasonable opportunity to express their views on disputed issues:

(a)

shall ensure by appropriate orders that parents and their duly authorized representatives have timely access to records and information under the public agency’s control which are reasonably necessary for a fair assessment of the IDEA issues raised by the requesting party;

(b)

shall limit the issues for hearing to those permitted by IDEA which the hearing officer deems necessary for the protection of the rights that have been asserted by the requesting party in each case;

(c) may issue orders directing the timely production of relevant witnesses, documents, or other information within a party's control, protective orders, or administrative orders to appear for hearings, and may address a party's unjustified failure or refusal to comply by appropriate limitations on the claims, defenses, or evidence to be considered;

(d) shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in federal courts or the courts of New Mexico;

(e) may issue such other orders and make such other rulings, not inconsistent with express provisions of these rules or IDEA, as the hearing officer deems appropriate to control the course, scope, and length of the proceedings while ensuring that the parties have a fair opportunity to present and support all allowable claims and defenses that have been asserted; and

(f) shall not permit non-attorneys to represent parties at due process hearings.

(9) **Duties of the hearing officer.** The hearing officer shall excuse himself or herself from serving in a hearing in which he or she believes a personal or professional bias or interest exists which conflicts with his or her objectivity. The hearing officer shall:

(a) make a determination regarding the sufficiency of a request for due process within five days of receipt of any notice of insufficiency and notify the parties of this determination in writing;

(b) schedule an initial prehearing conference within 14 days of commencement of the timeline for a due process hearing or as soon as reasonably practicable in an expedited case pursuant to Paragraph (12) of Subsection I of 6.31.2.13 NMAC;

(c) reach a decision, which shall include written findings of fact, conclusions of law, and reasons for these findings and conclusions and shall be based solely on evidence presented at the hearing;

(d) transmit the decision to the parties and to the SED within 45 days of the commencement of the timeline for the hearing, unless a specific extension of time has been granted by the hearing officer at the request of a party to the hearing, or at the joint request of the parties where the reason for the request is to permit the parties to pursue an ADR option; for an expedited hearing, no extensions or exceptions beyond the time frame provided in Subparagraph (a) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC;

(e) the hearing officer may reopen the record for further proceedings at any time before reaching a final decision after transmitting appropriate notice to the parties; the hearing is considered closed and final when the written decision is transmitted to the parties and to the SED; and

(f) the decision of the hearing officer is final, unless a party brings a civil action as set forth in Paragraph (24) of Subsection I of 6.31.2.13 NMAC.

(10) **Withdrawal of request for hearing.** A party may unilaterally withdraw a request for due process at any time before a decision is issued. A written withdrawal that is transmitted to the hearing officer, and the other party at least two business days before a scheduled hearing, shall be without prejudice to the party's right to file a later request on the same claims, which shall ordinarily be assigned to the same hearing officer. A withdrawal that is transmitted or communicated within two business days of the scheduled hearing shall ordinarily be with prejudice to the party's right to file a later request on the same claims unless the hearing officer orders otherwise for good cause shown. A withdrawal that is

entered during or after the hearing but before a decision is issued shall be with prejudice. In any event, the hearing officer shall enter an appropriate order of dismissal.

(11) **Prehearing procedures.** Unless extended by the hearing officer at the request of a party, within 14 days of the commencement of the timeline for a due process hearing and as soon as is reasonably practicable in an expedited case, the hearing officer shall conduct an initial prehearing conference with the parent and the public agency to:

(a) identify the issues (disputed claims and defenses) to be decided at the hearing and the relief sought;

(b) establish the hearing officer's jurisdiction over IDEA and gifted issues;

(c) determine the status of the resolution session, FIEP meeting, or mediation between the parties and determine whether an additional prehearing conference will be necessary as a result;

(d) review the hearing rights of both parties, as set forth in Paragraphs (15) and (16) of Subsection I of 6.31.2.13 NMAC, including reasonable accommodations to address an individual's need for an interpreter at public expense;

(e) review the procedures for conducting the hearing;

(f) set a date, time, and place for the hearing that is reasonably convenient to the parents and child involved; the hearing officer shall have discretion to determine the length of the hearing, taking into consideration the issues presented;

(g) determine whether the child who is the subject of the hearing will be present and whether the hearing will be open to the public;

(h) set the date by which any documentary evidence intended to be used at the hearing by the parties

shall be exchanged; the hearing officer shall further inform the parties that, not less than five business days before a regular hearing or, if the hearing officer so directs, not less than two business days before an expedited hearing, each party shall disclose to the other party all evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing; the hearing officer may bar any party that fails to disclose such documentary evidence, evaluation(s), or recommendation(s) by the deadline from introducing the evidence at the hearing without the consent of the other party;

(i)

as appropriate, determine the current educational placement of the child pursuant to Paragraph (26) of Subsection I of 6.31.2.13 NMAC;

(j)

exchange lists of witnesses and, as appropriate, entertain a request from a party to issue an administrative order compelling the attendance of a witness or witnesses at the hearing;

(k)

address other relevant issues and motions; and

(l)

determine the method for having a written, or at the option of the parent, electronic verbatim record of the hearing; the public agency shall be responsible for arranging for the verbatim record of the hearing; and

(m)

the hearing officer shall transmit to the parties and the SED of the department a written summary of the prehearing conference; the summary shall include, but not be limited to, the date, time, and place of the hearing, any prehearing decisions, and any orders from the hearing officer.

(12)

Each hearing involving oral arguments shall be conducted at a time and place that is reasonably convenient to the parents and child involved.

(13)

In order to limit testimony at the hearing to only those factual matters which remain in dispute between the parties, on or before 10 days before the date of

the hearing, each party shall submit a statement of proposed stipulated facts to the opposing party. On or before five days before the date of the hearing, the parties shall submit a joint statement of stipulated facts to the hearing officer. All agreed-upon stipulated facts shall be deemed admitted, and evidence shall not be permitted for the purpose of establishing these facts.

(14)

Any party to a hearing has the right to:

(a)

be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(b)

present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c)

prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before a regular hearing or, if the hearing officer so directs in the prehearing summary, at least two business days before an expedited hearing;

(d)

obtain a written, or, at the option of the parents, electronic verbatim record of the hearing; and

(e)

obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(15)

Parents involved in hearings also have the right to:

(a)

have the child who is the subject of the hearing present; and

(b)

open the hearing to the public.

(16)

The record of the hearing and the findings of fact and decisions shall be provided at no cost to the parents.

(17)

Limitations on the hearing.

(a)

The party requesting the due process hearing shall not be allowed to raise issues at the hearing that were not

raised in the request for a due process hearing (including an amended request, if such amendment was previously permitted) filed under Paragraph (5) of Subsection I of 6.31.2.13 NMAC, unless the other party agrees otherwise.

(b)

Timeline for requesting hearing. A parent or public agency shall request an impartial due process hearing within two years of the date that the parent or public agency knew or should have known about the alleged action that forms the basis of the due process request.

(c)

Exceptions to the timeline. The timeline described in Subparagraph (b) of Paragraph (18) of Subsection I of 6.31.2.13 NMAC shall not apply to a parent if the parent was prevented from requesting the hearing due to:

(i)

specific misrepresentations by the public agency that it had resolved the problem that forms the basis of the due process request; or

(ii)

the public agency's withholding of information from the parent that was required under this part to be provided to the parent.

(18)

Rules for expedited hearings. The rules in Paragraphs (4) through (18) of Subsection I of 6.31.2.13 NMAC shall apply to expedited due process hearings with the following exceptions.

(a)

The SED of the department and the hearing officer shall ensure that a hearing is held within 20 school days of the date the request for hearing is received by the SED, and a written decision is reached within 10 school days of the completion of the hearing, without exceptions or extensions, and thereafter mailed to the parties.

(b)

The hearing officer shall seek to hold the hearing and issue a decision as soon as is reasonably practicable within the time limit described in Subparagraph (a) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC, and shall expedite the proceedings

with due regard for any progress in a resolution session, FIEP meeting, or mediation, the parties' need for adequate time to prepare and the hearing officer's need for time to review the evidence and prepare a decision after the hearing.

(c)

The parties shall decide whether to convene a resolution session, FIEP meeting, or mediation before the commencement of an expedited hearing in accordance with Paragraph (8) of Subsection I of 6.31.2.13 NMAC and are encouraged to utilize one of these preliminary meeting options. However, in the case of an expedited hearing, agreement by the parties to convene a resolution session, FIEP meeting, or mediation shall not result in the suspension or extension of the timeline for the hearing stated under Subparagraph (a) of Paragraph (19) of Subsection I of 6.31.2.13 NMAC. The timeline for resolution sessions provided in 34 CFR Sec. 300.532(c)(3) shall be observed.

(d)

Subparagraph (a) of Paragraph (6) of Subsection I of 6.31.2.13 NMAC relating to sufficiency of the request for the expedited due process hearing does not apply to expedited hearings.

(e)

The hearing officer may shorten the timeline for the exchange of proposed stipulated facts between the parties as the hearing officer deems necessary and appropriate given the circumstances of a particular case. The hearing officer may also shorten the timeline for providing agreed-upon stipulated facts to the hearing officer to two school days before the hearing.

(f)

Decisions in expedited due process hearings are final, unless a party brings a civil action as provided in Paragraph (24) of Subsection I of 6.31.2.13 NMAC.

(19) Decision of the hearing officer.

(a)

In general. Subject to Subparagraph (b) of Paragraph (20) of Subsection I of 6.31.2.13 NMAC, a decision made

by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE).

(b)

Procedural issues. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

(i)

impeded the child's right to a FAPE;

(ii)

significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or

(iii)

caused a deprivation of educational benefits.

(c)

Rule of construction. Nothing in this paragraph shall be construed to preclude a hearing officer from ordering a public agency to comply with procedural requirements under this section.

(20) Rule

of construction. Nothing in this Subsection I shall be construed to affect the right of a parent to file a complaint with the SED of the department, as described under Subsection H of 6.31.2.13 NMAC.

(21)

Modification of final decision.

Clerical mistakes in final decisions, orders, or parts of the record and errors therein arising from oversight or omission may be corrected by the hearing officer at any time on the hearing officer's own initiative or on the request of any party and after such notice, if any, as the hearing officer orders. Such mistakes may be corrected after a civil action has been brought pursuant to Paragraph (24) of Subsection I of 6.31.2.13 NMAC only with leave of the state or federal district court presiding over the civil action.

(22) Expenses

of the hearing. The public agency shall be responsible for paying administrative costs associated with a hearing, including the hearing

officer's fees and expenses and expenses related to the preparation and copying of the verbatim record, its transmission to the SED, and any further expenses for preparing the complete record of the proceedings for filing with a reviewing federal or state court in a civil action. Each party to a hearing shall be responsible for its own legal fees or other costs, subject to Paragraph (25) of Subsection I of 6.31.2.13 NMAC.

(23) Civil

action.

(a)

Any party aggrieved by the decision of a hearing officer in an IDEA matter has the right to bring a civil action in a state or federal district court pursuant to 20 USC Sec. 1415(i) and 34 CFR Sec. 300.516. Any civil action shall be filed within 30 days of the receipt of the hearing officer's decision by the appealing party.

(b)

A party aggrieved by the decision of a hearing officer in a matter relating solely to the identification, evaluation, or educational placement of or services to a child who needs or may need gifted services may bring a civil action in a state court of appropriate jurisdiction within 30 days of receipt of the hearing officer's decision by the appealing party.

(24) Attorney

fees.

(a)

In any action or proceeding brought under 20 USC Sec. 1415, the court, in its discretion and subject to the further provisions of 20 USC Sec. 1415(i) and 34 CFR Sec. 300.517, may award reasonable attorney fees as part of the costs to:

(i)

the parent of a child with a disability who is a prevailing party;

(ii)

a prevailing public agency against the attorney of a parent who files a request for due process or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

(iii) a prevailing public agency against the attorney of a parent, or against the parent, if the parent’s complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(b) Any action for attorney fees shall be filed within 30 days of the receipt of the last administrative decision.

(c) Opportunity to resolve due process complaints. A meeting conducted pursuant to Subparagraph (a) of Paragraph (8) of Subsection I of 6.31.2.13 NMAC shall not be considered:

(i) a meeting convened as a result of an administrative hearing or judicial action; or

(ii) an administrative hearing or judicial action for purposes of this paragraph.

(d) Hearing officers are not authorized to award attorney fees.

(e) Attorney fees are not recoverable for actions or proceedings involving services to gifted children or other claims based solely on state law.

(25) Child’s status during proceedings.

(a) Except as provided in 34 CFR Sec. 300.533 and Paragraph (4) of Subsection I of 6.31.2.13 NMAC, and unless the public agency and the parents of the child agree otherwise, during the pendency of any administrative or judicial proceeding regarding an IDEA due process request, the child involved shall remain in his or her current educational placement. Disagreements over the identification of the current educational placement which the parties cannot resolve by agreement shall be resolved by the hearing officer as necessary.

(b) If the case involves an application for initial admission to public school, the child, with the consent of the

parents, shall be placed in the public school until the completion of all the proceedings.

(c) If a hearing officer agrees with the child’s parents that a change of placement is appropriate, that placement shall be treated as an agreement between the public agency and the parents for purposes of Subparagraph (a) of Paragraph (26) of Subsection I of 6.31.2.13 NMAC.

J. Surrogate parents and foster parents.

(1) Each public agency shall ensure that a qualified surrogate parent is appointed in compliance with 34 CFR Sec. 300.519 when needed to protect the rights of a child with a disability who is within the public agency’s educational jurisdiction. A surrogate parent need not be appointed if a person who qualifies as a parent under 34 CFR Sec. 300.30(b) and Paragraph (13) of Subsection B of 6.31.2.7 NMAC can be identified.

(2) A foster parent who meets all requirements of 34 CFR Sec. 300.30 may be treated as the child’s parent pursuant to that rule. A foster parent who does not meet those requirements but meets all requirements of 34 CFR Sec. 300.519 may be appointed as a surrogate parent if the public agency that is responsible for the appointment deems such action appropriate.

(3) Pursuant to 34 CFR Sec. 300.519, a surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

K. Transfer of parental rights to students at age 18.

(1) Pursuant to Secs. 12-2A-3 and 28-6-1 NMSA 1978, a person’s age of majority begins on the first instant of his or her 18th birthday and a person who has reached the age of majority is an adult for all purposes not otherwise limited by state law. A guardianship proceeding under the probate code is the only way an adult in New Mexico can legally be determined

to be incompetent and have the right to make his or her own decisions taken away. Public agencies and their IEP teams are not empowered to make such determinations under New Mexico law. Accordingly, pursuant to 34 CFR Sec. 300.520, when a child with a disability reaches age 18 and does not have a court-appointed general guardian, limited guardian, or other person who has been authorized by a court to make educational decisions on the student’s behalf or who has not signed a power of attorney as provided under New Mexico law:

(a) a public agency shall provide any notices required by 34 CFR Part 300 to the child and the parents;

(b) all other rights accorded to parents under Part B of IDEA, New Mexico law, or department rules and standards transfer to the child; and

(c) the public agency shall notify the individual and the parents of the transfer of rights.

(2) Pursuant to 34 CFR Sec. 300.320(c), each annual IEP review for a child who is age 14 or older shall include a discussion of the rights that will transfer when the child turns age 18 and, as appropriate, a discussion of the parents’ plans for obtaining a guardian before that time. The IEP of a child who is age 14 or older shall include a statement that the child and the parent have been informed of the rights that will transfer to the child at age 18.

L. Confidentiality of information.

(1) Confidentiality requirements. Each public agency collecting, using, or maintaining any personally identifiable information on children under Part B of IDEA shall comply with all applicable requirements of 34 CFR Secs. 300.610 through 300.626, and the federal Family Educational Rights and Privacy Act, 34 CFR Part 99.

(2) Parental rights to inspect, review, and request amendment of education

records. Each public agency shall permit parents or their authorized representatives to inspect and review any education records relating to their children that are collected, maintained, or used by the public agency under Part B of IDEA pursuant to 34 CFR Sec. 300.613. A parent who believes that information in the education records is inaccurate or misleading or violates the privacy or other rights of the child may request the public agency that maintains the information to amend the information pursuant to 34 CFR Sec. 300.618 and shall have the opportunity for a hearing on that request pursuant to 34 CFR Secs. 300.619 through 300.621 and 99.22.

(3) Transfer of student records.

(a) Pursuant to 34 CFR Sec. 99.31(a)(2), an educational agency may transfer child records without parental consent when requested by another educational agency in which a child seeks or intends to enroll as long as the sending educational agency has included the proper notification that it will do so in its required annual FERPA notice to children and parents. In view of the importance of uninterrupted educational services to children with disabilities, each New Mexico public agency is hereby directed to include such language in its annual FERPA notice and to ensure that it promptly honors each proper request for records from an educational agency that has become responsible for serving a child with a disability.

(b) State-supported educational programs and the educational programs of juvenile or adult detention or correctional facilities are educational agencies for purposes of the Family Educational Rights and Privacy Act (FERPA) and are entitled to request and receive educational records on children with disabilities on the same basis as local school districts. Public agencies shall promptly honor requests for records to assist such programs in providing appropriate services to children within their educational jurisdiction.

(c) Pursuant to 34 CFR Sec. 99.34(b), an educational agency that is authorized to transfer student records to another educational agency without parental consent under Sec. 99.31(a)(2) may properly transfer to the receiving educational agency all educational records the sending educational agency maintains on a child, including medical, psychological and other types of diagnostic and service information which the educational agency obtained from outside sources and used in making or implementing educational programming decisions for the child.

(d) Pursuant to Paragraph (3) of Subsection E of 6.29.1.9 NMAC, 34 CFR Sec. 300.229 and the federal Elementary and Secondary Education Act of 1965 at 20 USC 7221(g), any transfer of educational records to a private or public elementary or secondary school in which a child with disabilities seeks, intends, or is instructed to enroll shall include the following:

(i) transcripts and copies of all pertinent records as normally transferred for all students;

(ii) the child's current individualized education program with all supporting documentation, including the most recent multidisciplinary evaluations and any related medical, psychological, or other diagnostic or service information that was consulted in developing the IEP; and

(iii) disciplinary records with respect to current or previous suspensions or expulsions of the child.

(4) Parental refusals of consent for release of information. If parental consent is required for a particular release of information regarding a child with a disability and the parent refuses consent, the sending or receiving public agency may use the impartial due process hearing procedures specified in Subsection I of 6.31.2.13 NMAC to determine if the information may be released

without parental consent. If the hearing officer determines that the proposed release of information is reasonably necessary to enable one or more public agencies to fulfill their educational responsibilities toward the child, the information may be released without the parent's consent. The hearing officer's decision in such a case shall be final and not subject to further administrative review.

(5) Destruction of information.

(a) Pursuant to 34 CFR Sec. 300.624, each public agency shall inform parents when personally identifiable information collected, maintained, or used under 34 CFR Part 300 is no longer needed to provide educational services to the child. As at other times, the parents shall have the right to inspect and review all educational records pertaining to their child pursuant to 34 CFR Sec. 300.613. The information shall be destroyed at the request of the parents or, at their option, the records shall be given to the parents. When informing parents about their rights to destruction of personally identifiable records under these rules, the public agency should advise them that the records may be needed by the child or the parents for social security benefits and other purposes.

(b) If the parents do not request the destruction of personally identifiable information about their children, the public agency may retain that information permanently. In either event, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. Additional information that is not related to the student's IDEA services may be maintained if allowed under 34 CFR Part 99.

(6) Educational records retention and disposition schedules.

(a) Definitions as used in this paragraph:

(i) “destruction” means physical destruction or removal of personal identifiers from educational records so that the information is no longer personally identifiable; and

(ii) “educational records” means the type of records covered under the definition of “educational records” in 34 CFR Part 99 of the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g (FERPA).

(b) Pursuant to 1.20.2.102 NMAC, the public agency shall notify the parents that the public agency shall retain specific information for five years to include:

most recent IEP;

(ii) most recent 2 years of child progress reports or referral form;

(iii) related services reports;

(iv) summary of academic achievement and functional performance;

(v) parent communication;

(vi) public agency community action;

(vii) writing sample; and

(viii) staff reports on behavior.

(c) Pursuant to 34 CFR Sec. 300.624 and Paragraph (5) of this subsection, federal rules and department rules require public agencies to inform parents of proposed destruction of special education records.

(d) Pursuant to 34 CFR Sec. 300.624, the information shall be destroyed at the request of the parents. However, a permanent record of a child’s name, address, phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limit. Notice of destruction of child records shall include:

(i) informing parents at the last IEP meeting of personally identifiable information that is no longer needed to provide special education and related service and information that shall be retained according to the state for five years under 1.20.1.102 NMAC;

(ii) documentation at the last IEP meeting and prior written notice of the information that is required to be maintained indefinitely;

(iii) documentation at the last IEP meeting and the prior written notice that the parent accepted or rejected the proposed action to maintain records;

(iv) if the parent requests that the public agency destroy information not required indefinitely, the public agency shall maintain the last IEP and prior written notice that states the parent required the public agency to destroy allowable information that shall be maintained for five years; and

(v) the public agency shall inform the parents of the proposed date of destruction of records at the last IEP meeting and document on the prior written notice of action the proposed date of destruction of records.

M. Computation of time.

(1) In computing any period of time prescribed or allowed by 6.31.2.13 NMAC, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday in which case the last day shall be the next business day. As used in this rule, “legal holiday” includes any day designated as a state holiday.

(2) Notwithstanding Paragraph (1) of this subsection, if the due date of a decision referenced in Subsection H of 6.31.2.13 NMAC falls on a Saturday, a Sunday, or a legal holiday, the decision will be due on the previous business day.

(3) Notwithstanding Paragraph (1) of this subsection, if the due date of a decision referenced in Subsection I of 6.31.2.13 NMAC falls on a Saturday, a Sunday, or a legal holiday, the decision shall be mailed no later than the actual due date. A decision is considered “mailed” when addressed, stamped, and placed in a United States postal service mailbox. If a parent exercises the option of receiving the decision electronically, the decision is “mailed” when transmitted electronically.
[6.31.2.13 NMAC - Rp, 6.31.2.13 NMAC, 7/14/2020]

6.31.2.14 RULES OF CONSTRUCTION:

A. U.S. department of education interpretations. The U.S. department of education’s (USDE) interpretations of the provisions of 34 CFR Part 300 as set forth in its Analysis of Comments and Changes to Part 300 at 71 Federal Register 46547-46753 (August 14, 2006), and other interpretations that are published or announced by the USDE in the federal register are recognized as the federal government’s official positions regarding the requirements of IDEA. Such interpretations shall be followed by the department to the extent that they do not conflict with express provisions of IDEA or case law from the federal courts.

B. Uniform Statute and Rule Construction Act. The Uniform Statute and Rule Construction Act, Sections 12-2A-1 through 12-2A-20 NMSA 1978, applies to the interpretation of 6.31.2 NMAC except to the extent that these rules incorporate permissible variations under the New Mexico version of the Uniform Statute and Rule Construction Act. References in 6.31.2 NMAC to state or federal laws or rules are intended to incorporate future amendments unless a provision in these rules is irreconcilable with a future amendment under the standards of the Uniform Statute and Rule Construction Act.

C. Conflicts with state or federal laws or rules. If any

state law or a state rule adopted by the department or a federal law or regulation grants greater rights to an individual or public agency than these rules provide, the provision(s) granting greater rights shall control to the extent necessary to avoid a conflict.

[6.31.2.14 NMAC - Rp, 6.31.2.14 NMAC, 7/14/2020]

HISTORY OF 6.31.2 NMAC:

Pre-NMAC History:

Material in this Part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

SBE Regulation 85-4, Educational Standards for New Mexico Schools Basic, Special Education, Vocational Programs, 10/21/1985

SBE Regulation 86-7, Educational Standards for New Mexico Schools, 9/2/1986

SBE Regulation 87-8, Educational Standards For New Mexico Schools, 2/2/1988

SBE Regulation 88-9, Educational Standards For New Mexico Schools, 10/28/1988

SBE Regulation 89-8, Educational Standards For New Mexico Schools, 11/22/1989

SBE Regulation 90-2, Educational Standards For New Mexico Schools, 9/7/1990

History of Repealed Material:

6 NMAC 5.2, Children with Disabilities/Gifted Children, filed 9/17/1997 - Repealed, 8/14/2000

6.31.2 NMAC, Children with Disabilities/Gifted Children, filed 8/1/2000 - Repealed, 6/29/2007

Other history:

6.31.2 NMAC, Children with Disabilities/Gifted Children, filed 6/29/2007 was repealed and replaced with 6.31.2 NMAC, Children with Disabilities/Gifted Children, effective 7/14/2020.

PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.80.5 NMAC, Sections 1, 7, 8, 9, 10, 11, 12, and 13 effective 7/14/2020.

6.80.5.1 ISSUING

AGENCY: Public Education Department, hereinafter the department.

[6.80.5.1 NMAC - N, 7/25/2017; A, 7/14/2020]

6.80.5.7 DEFINITIONS:

A. “Applicant” means a source, individual, or entity that has submitted an application to the department for approval to provide governing body training.

B. “Approved provider” means a source, individual, or entity approved by the department to provide governing body training that consists of a designated curriculum provided by a designated facilitator.

C. “Department-assigned training course code” means the [nine digit identification] code assigned to an application package that meets the substantive review requirements.

D. “Designated curriculum” means the curriculum that was provided in the application submitted to the department for the purpose of receiving approval to provide training to governing bodies.

E. “Designated facilitator” means the individual identified in the application submitted to the department for the purpose of receiving approval to provide training to governing bodies.

F. “Eligible facilitator” means a proposed facilitator who is not disqualified for any of the reasons identified in [Subparagraph] Subparagraphs (b) and (c) of Paragraph (2) of Subsection E of 6.80.5.11 NMAC.

G. “Governing body member” means a member of a governing body of a charter school who will be a voting member upon completion of the initial seven-hour training provided by the department

or who has completed the initial seven-hour training and is a voting member.

H. “School specific onboarding” means the action or process of integrating a new governing body member into the school by familiarizing the new governing body member with the school’s governance structure and requirements, other governing body members, financial status (including budget), history, contract, goals, model, staff, strengths, and challenges, and current academic, financial, and organizational performance.

[6.80.5.7 NMAC - N, 7/25/2017; A, 7/14/2020]

6.80.5.8 MANDATORY GOVERNING BODY TRAINING COURSE - NEW GOVERNING BODY MEMBERS:

A. Within the first fiscal year of service, each new governing body member shall complete a governing body training course that consists of, at a minimum, 10 hours of governing body training provided by approved providers.

B. [~~No new governing body member may attend a governing body meeting and vote on any governing body business without first completing [the] seven hours of required training described below through an in-person training provided by the department.~~] The department shall provide guidance that identifies specific standards within each area; however, applicants may identify additional standards within each area to address the needs of individual governing bodies and governing body members. The new governing body training shall include:

(1) two hours of training on public official/charter school governing body ethics and responsibilities;

(2) two hours of training on charter school fiscal requirements;

(3) one hour of training on understanding and evaluating academic data;

(4) one hour of training on open government, legal, and organizational performance requirements; [and]

~~[(5) one hour of training on legal and organizational performance requirements;]~~

~~[(6) (5) one hour of training on equity and culturally and linguistically responsive practices; and]~~

(6) three hours of additional training standards identified by the individual governing bodies and governing body members.

~~[C.]~~ If extraordinary circumstances exist and a new governing body member is unable to attend the in-person, course provided by the department within two months of being voted on to a governing body as a new governing body member, the governing body member may submit a waiver request accompanied by an explanation of the extraordinary circumstances. PED will process the waiver request within 14 days of receipt.

~~(1)~~ Extraordinary circumstances exist if the individual has documented professional commitments or personal commitments that prevent the individual from attending one the scheduled training dates or if the trainings being offered are located more than 100 round trip miles from the governing body member's home address.

~~(2)~~ If granted, a waiver will allow the governing body member to complete essential two-hour training through a virtual course provided by the department. To meet the requirements of the waiver, the governing body member must score at least eighty percent on an assessment at the end of the course on the first attempt. The governing body member must successfully complete the two-hour virtual training course within one month of being notified by the department that the waiver application is granted. Upon successful completion of the two-hour virtual training course, the governing body member will be allowed to vote. Additionally, the governing

body member will be required to complete the seven-hour, in-person course provided by the department within 12 months of beginning service as a governing body member. The governing body member must complete a total of 10 hours of approved training within the first fiscal year of service.

~~(3)~~ The essential two-hour virtual training course taken pursuant to a waiver does count toward the governing body member's 10 hours of mandatory minimum training required by Subsection A of 6.80.5.8 NMAC.

~~D.~~ For those governing body members who have not been granted a waiver, and have completed the seven hours of required training described in Section B of 6.80.5.8 NMAC, the remaining three hours of training required to complete the first year mandatory training course shall be completed during the new governing body member's first fiscal year of service and shall be provided by an approved provider. The training shall consist of:

~~(1)~~ extended time within any of the required areas identified above based on the needs identified by the school's governing body, or

~~(2)~~ school-specific onboarding if the school's administrator or governing body is an approved provider.]

~~[E.]~~ C. If a governing body member resigns his or her term prior to the end of the first fiscal year of service, the additional training hours required for that fiscal year shall be prorated based on the number of full and partial months during which the governing body member served and rounded to the nearest full hour. [6.80.5.8 NMAC - N, 7/25/2017; A, 7/14/2020]

6.80.5.9 MANDATORY GOVERNING BODY TRAINING COURSE CONTINUING GOVERNING BODY MEMBERS:

A. Unless exempted from specific hourly training requirements as [laid out] described below, each governing body

member continuing to serve on a governing body beyond the end of their first fiscal year of service shall annually complete a governing body training course that consists of, at a minimum, eight hours of governing body training provided by approved providers [which address the following areas]. The department shall provide guidance that identifies specific standards within each area; however, applicants may identify additional standards within each area to address the needs of individual governing bodies and governing body members. The continuing governing body training shall include:

(1) one hour of training on public official/charter school governing body ethics and responsibilities;

(2) three hours of training on charter school fiscal requirements [pursuant to the Public School Finance Act, NMSA 1978 § 22-8-1 et seq.];

(3) two hours of training on understanding and evaluating academic data [including state assessment data, school and teacher accountability systems data and interim and summative academic assessment data];

(4) one hour of training on open government, legal, and organizational performance [and] requirements [regarding free public-school education; and;

~~(5) one hour of training on understanding and overseeing the organizational performance of a charter school;] and~~
~~[(6) (5) one hour of training on equity and culturally and linguistically responsive practices.~~

B. Governing body members who have served on a governing body beyond the end of their first fiscal year of their service may be exempted from specific hourly training requirements based on the school's [academic or] fiscal performance.

~~[(4)]~~ For any school that has maintained a letter grade of B or better for the three most recent years and has received no rating below C in any area

of the report card for the current year, the school's governing body members shall be exempted from the requirement to complete two hours of training relating to understanding and evaluating academic data.]

~~[(2)]~~ (1) For any school that has received an unmodified annual audit in each of the past three years with no material weaknesses, no multi-year repeat findings, no significant deficiencies, and that has received no more than two compliance findings in the current year, the school's governing body member shall be exempted from ~~[two]~~ one of the ~~[three]~~ two hours of required training relating to charter school fiscal requirements.

~~[(3)]~~ (2) The department ~~[with]~~ shall annually identify the schools that are eligible, under the criteria established above, to claim an exemption for their governing body members.

C. The mandatory governing body training course shall be completed in one or multiple sessions during the fiscal year.

D. The mandatory governing body training course may not consist of any of the same governing body training that was completed by the governing body member in any of the prior years of the same contract term as long as additional governing body training is available.

E. Annually, the governing body training in each of the areas identified above shall be related to specific areas of growth within each area for individual governing bodies or governing body members based on the annual governing body evaluation.

F. If a governing body member who is no longer in the first fiscal year of his or her service on the governing body resigns his or her term prior to the end of the fiscal year, the hours required for that fiscal year shall be prorated based on the number of full and partial months during which the governing body member served and rounded to the nearest full hour.

[6.80.5.9 NMAC - N, 7/25/2017; A, 7/14/2020]

6.80.5.10 GOVERNING BODY TRAINING REPORTING AND COMPLIANCE:

A. Annually no later than ~~[August 1]~~ July 1, each charter school ~~[must]~~ shall ensure the department receives a record of attendance and completion for all governing body members who served on the governing body in the prior fiscal year. The record of attendance and completion may be provided either by the charter school or by the approved provider that provided the governing body training. Records are subject to verification by the department.

B. Records of attendance and completion shall include:

(1) the name of the governing body member;

(2) the name of the school for which the identified governing body member serves on the governing body; and

(3) the governing body training's department-assigned training course code.

C. Failure to timely provide records of attendance and completion of the required number of governing body training hours for all governing body members who served on the governing body of the school in a fiscal year shall be reported by the department to the authorizer. Additionally, the non-compliance may result in progressive disciplinary action by the department or the authorizer, based on the authority of that entity, which may include but is not limited to:

(1) requiring the creation of a corrective action plan and completion of mandatory department-provided governing body training at the expense of the school or governing body member for any non-compliant governing body member who is still serving on the governing body;

(2) withholding, by the department, of no more than five percent of the charter school's monthly funding until the school comes into compliance with the requirements when the school has

failed to comply with its corrective action plan and has one or more non-compliant members still serving on the governing body;

(3) suspension, by the department, of any or all of the governing body's authority when the school has failed to comply with its corrective action plan, funding has been withheld for at least 30 days, and the non-compliant governing body member is still serving on the governing body; and

(4) revocation or non-renewal of the school's charter when prior disciplinary action has not resulted in the school ~~[coming into compliance]~~ becoming compliant and has the non-compliant governing body member ~~[is]~~ still serving on the governing body.

[6.80.5.10 NMAC - N, 07/25/2017; A, 7/14/2020]

6.80.5.11 GOVERNING BODY TRAINING PROVIDER APPROVAL:

A. No source, individual, or entity may provide governing body training, as defined in the charter schools act, unless it is an approved provider providing a designated curriculum with a designated facilitator. The approved provider may provide, as governing body training, only those designated curricula with the designated facilitators for which it has received approval from the department. Department approvals are valid for a term of 36 months, but may be revoked at any time.

B. The department shall, at a minimum, accept application packages on a biannual basis from applicants seeking to be approved providers. The department shall publish the application and application deadlines on its website annually no later than January 1. The department may approve trainings provided by the department or other state agencies on its own review without requiring the department or another state agency to apply for approval of the training; this review may also occur upon request from a governing body member.

C. Review timeframes.

The timeframes for approving or disapproving an application package are:

- (1) administrative completeness review: 25 days;
- (2) substantive review: 75 days; and
- (3) overall: 100 days.

D. Administrative review. The administrative completeness review begins the day after the department receives an application package.

(1) An application package to provide governing body training shall be administratively complete if:

(a) the application package identifies a specific individual as a proposed facilitator;

(b) the application package contains all the required information, materials, documents, attachments, signatures, and notarizations identified in the application posted on the department’s website;

(c) all the application package’s components are formatted as required;

(d) the proposed designated curriculum addresses at least one of the required areas identified in [items] Subsection A of 6.80.5.9 NMAC; and

(e) all templates are unmodified, completely filled out, and from the current application package.

(2) If the application package is administratively incomplete when received, the department shall provide the applicant a notice of deficiency that states the reasons the application package was found to be administratively incomplete.

(a) Upon written notice to the applicant that the application package is administratively incomplete, the department shall close the applicant’s file.

(b) If the submission deadline has not yet passed, an applicant may correct deficiencies in an administratively incomplete application package and submit a new application package in the same application cycle.

(3) An applicant who believes their application was erroneously designated as administratively incomplete may submit a written request for reconsideration to the department within 14 days of the date of notice.

(a) The request for reconsideration shall contain a clear statement indicating how the previously submitted application package fulfilled each of the requirements that were identified as having been deficient. The request for reconsideration shall not provide any new or additional information, documents, or materials.

(b) A request for reconsideration that does not address each deficiency identified in the notice or that contains new or additional information, documents, or materials shall not be considered and the applicant shall be notified that the request was not submitted according to Subsection D of 6.80.5.11 NMAC, and the applicant’s file [is] shall be closed.

(4) The department shall review a request for reconsideration that is submitted according to Paragraph (3) of Subsection D of 6.80.5.11 NMAC and provide a decision on the request for reconsideration within 14 days of receipt.

(a) If the department determines the application package was erroneously designated as administratively incomplete, the department shall reopen the applicant’s file and send a written notice of administrative completeness to the applicant.

(b) If the department determines the application package was correctly designated as administratively incomplete, the applicant’s file shall remain closed.

(5) If the application package is administratively complete, the department shall send a written notice of administrative completeness to the applicant.

(6) If the department does not provide a notice of deficiency or administrative completeness to the applicant within the administrative completeness review time-frame, the application package is deemed administratively complete.

E. Substantive review. The substantive review begins when an application package is determined to be administratively complete.

(1) Within the overall review timeframe, the department shall provide the applicant with written notice of its decision to approve or disapprove the application to provide governing body training.

(2) The department shall approve an applicant to provide a designated curriculum with a designated facilitator if the applicant meets the following substantive requirements:

(a) the applicant has provided evidence that demonstrates the designated facilitator has knowledge, skills, and experience constituting expertise in the area of the designated curriculum;

(b) the designated facilitator proposed by the applicant has not been a governing body member, administrator, senior leader, or business manager of a charter school that had its board of finance suspended or its charter revoked or non-renewed at the time of the activity that was the reason for the suspension, revocation, or non-renewal;

(c) the designated facilitator proposed by the applicant has not been convicted of a crime of moral turpitude, [and] has not had a professional license revoked, and has not been subject to disciplinary action for ethical or fiscal misconduct;

(d) the applicant has demonstrated that the proposed designated curriculum

addresses at least one of the required areas identified in [items] Subsection A of 6.80.5.9 NMAC and is legally and factually accurate;

(e)

the time allotted or planned for providing the training is sufficient and not excessive for the proposed content and materials provided;

(f)

if the applicant intends on charging a fee for the governing body training, the fee is reasonable as compared to local and national providers of similar trainings;

(g)

the proposed designated curriculum is designed to improve governing body members' knowledge, skills, and abilities to fulfill their statutory duties, comply with all applicable laws, and ensure charter schools meet the academic performance expectations of the department and the authorizer;

(h)

if the training is to be provided virtually, the application includes a technology description that identifies methods that will be used to verify participant engagement throughout the training and terminate the training if the participant is not engaged. Virtual training [must] shall also include an assessment of information understanding and retention at the end of training. The assessment [must] shall be aligned to the training, shall not be passed with a score below eighty percent, and shall not allow multiple attempts by the participant.

[(iv)] (i)

The applicant describes a process it will use to evaluate the quality of the trainings, which includes end of training evaluations completed by all attendees to evaluate:

[(iv)] (i)

the knowledge and skill of the facilitator;

[(iv)] (ii)

the quality and relevance of the information;

[(iv)] (iii)

what actions the attendees will take based on what they learned in the governing body training; and

[(iv)] (iv)

the value of the governing training in

improving the attendees' knowledge, skills, and abilities to fulfill their statutory duties and comply with all applicable laws.

F. Upon completion of the substantive review, the department shall provide the applicant a notice of denial or approval.

(1) If an

application package meets the substantive requirements, the department shall provide a written notice of approval that contains:

(a)

the name of the training and facilitator;

(b)

the number of approved hours for which the training will be eligible;

(c)

the areas identified in Subsection A of 6.80.5.9 NMAC that the training will fulfill [if any];

(d)

the training's department-assigned training course code; and

(e)

a copy of the approved application package.

(2) If an

application package does not meet the substantive requirements, the department shall provide a written notice of denial that contains:

(a) a

specific description of the reasons the application package did not meet the substantive requirements; and

(b)

a copy of the denied application package.

G. An applicant that receives a notice of denial may submit a revised application package and written request for reconsideration to the department within 14 days of the date of notice.

(1) The

request for reconsideration shall contain:

(a)

a clear statement indicating how the previously submitted application package has been revised to address the deficiencies identified in the written notice of denial; and

(b)

a revised application package with

changes tracked with strikeouts and red, underlined insertions.

(2) A request

for reconsideration that does not address each deficiency identified in the notice shall not be considered, [and] the applicant shall be notified that the request was not submitted according to Subsection D of 6.80.5.11 NMAC, and the applicant's file [is] shall be closed.

H. The department

shall review a revised application package and request for reconsideration that is submitted according to Subsection G of this section and provide a decision on the request for reconsideration within 21 days of receipt.

(1) If the

department determines the revised application package meets the substantive requirements, the department shall provide a written notice of approval in accordance with Paragraph (1) of Subsection F of 6.8.50.11 NMAC.

(2) If the

department determines the revised application package does not meet the substantive requirements, the department shall provide a written notice of final action and denial in accordance with Paragraph (2) of Subsection F of 6.8.50.11 NMAC. The applicant may submit a new application pursuant to any established application deadlines. [6.80.5.11 NMAC - N, 7/25/2017; A, 7/14/2020]

6.80.5.12 APPROVED GOVERNING BODY TRAINING REPORTING REQUIREMENTS:

A. Annually no later than [August 1] July 1, each approved provider [must] shall submit a report to the department on all trainings provided during the prior fiscal year and all planned or proposed dates to provide training in the upcoming year.

(1) For each

training provided in the prior fiscal year, the report shall include:

(a)

the date;

(b)

the training's department-assigned training course code;

(c) the name of each governing body member attendee and the charter school on whose governing body they serve;

(d) sign in and sign out sheets for all attendees;

(e) for virtual trainings, the score on each assessment taken and the summary of participant engagement; and

(f) copies of [or] a summary of the attendees' end of training evaluations.

(2) For all confirmed or proposed dates for the upcoming year, the report shall include:

(a) whether the governing body training is proposed or confirmed;

(b) the date and start time;

(c) the training's department-assigned training course code;

(d) the proposed location of the training;

(e) whether the training is open for general attendance by governing body members or is being offered to a specific, limited audience;

(f) the cost of the training; and

(g) the process for registration if the training is open for general attendance by governing body members.

B. For any governing body trainings that were not reported as proposed trainings in the [August 1] July 1 report to the department, the approved provider [must] shall provide written notice to the department at least 14 days prior to providing governing body training. The notice shall include the information identified in Paragraph (2) of Subsection A of 6.80.5.12 NMAC.

C. Each approved provider [must] shall provide the department with written notice within seven days if at any time the designated facilitator's status as an eligible facilitator changes for the

reasons outlined in Items [(ii-iv)] (i-iv) of Subparagraph (h) of Paragraph (2) of Subsection E of 6.80.5.11 NMAC.

D. Annually no later than July 30, the department shall publish a list of all governing body trainings that are open for general attendance by governing body members on the department's website.

(1) The listing shall include:

(a) the date and start time;

(b) the training and facilitator name;

(c) the training's department-assigned training course code;

(d) the location of the training, if available;

(e) the number of approved hours for which the training will be eligible;

(f) the requirements identified in Subsection A of 6.80.5.9 NMAC that the training will fulfill;

(g) the cost of the training;

(h) the process for registration; and

(i) whether the governing body training is proposed or confirmed.

(2) Within seven days of receipt of notice that governing body training will be provided, for which the department did not receive notice in the annual reports, the department shall update the listing on its website with the information identified in Subsection C of 6.80.5.12 NMAC.

E. Annually no later than August 15, the department shall publish on its website the prior year reports, described in Paragraph (1) of Subsection A of 6.80.5.12 NMAC, from each approved provider.

F. Failure to timely provide the reports required in Subsections A and B of 6.80.5.12 NMAC may result in revocation or suspension of the approved provider status.

[6.80.5.12 NMAC - N, 7/25/2017; A, 7/14/2020]

6.80.5.13 SUSPENSION OR REVOCATION OF APPROVAL OF GOVERNING BODY TRAINING:

A. Any approved provider may have that approval suspended or revoked for the following reasons:

(1) Failure to timely provide the reporting identified in 6.80.5.12 NMAC, including:

(a) annual reports; or

(b) reports of trainings that will be provided that were not identified in the annual reports.

(2) A change in the status of the designated facilitator as an eligible facilitator as a result of any of the following:

(a) the charter school of which the designated facilitator is a governing body member, administrator, senior leader, or business manager has its board of finance suspended or its charter revoked or non-renewed,

and the designated facilitator was in the role at the school at the time of the activity that was the reason for the suspension, revocation, or non-renewal; or

(b) the designated facilitator is convicted of a crime of moral turpitude, [or] has a professional license revoked, or has been subject to disciplinary action for ethical or fiscal misconduct.

(3) Failure to keep appropriate and accurate governing body training records, which may include:

(a) falsifying attendance records for any governing body member;

(b) failing to provide or collect responses to the end of training survey;

(c) failing to provide verification of completion or attendance; or

(d) failing to keep sign-in and sign-out logs.

(4) Providing a governing body training that is not approved while identifying the

training as approved, which may include:

- (a) using a facilitator other than the designated facilitator;
- (b) using a curriculum other than the designated curriculum;
- (c) charging a fee in excess of the reasonable fee identified in the application; or
- (d) providing training for a time period that is substantially shorter than the time for which the training is approved.

B. If the department determines there is reason to suspend or revoke the approved provider status, the department shall provide a written notice of contemplated revocation or suspension.

(1) The notice shall contain:

- (a) the training course codes and names for which the revocation or suspension is being considered;
- (b) a specific description of the reasons for the suspension or revocation;
- (c) if the department is proposing a suspension, the term and scope of the suspension; and
- (d) the process for responding to the notice of contemplated revocation or suspension.

(2) An approved provider that receives a written notice of contemplated revocation or suspension may submit a response within 14 days ~~[or]~~ of receiving the notice. The response shall contain:

- (a) a clear statement that responds to each of the reasons for the contemplated action; and
 - (b) evidence or documentation to support the statement.
- (3) The department shall review a response to a notice of contemplated revocation or suspension within 21 days of receipt.

(a)

If the department determines the suspension or revocation is appropriate and justified, the department shall provide a written notice of suspension or revocation in accordance with Paragraph (1) of Subsection B of ~~[6.8.50.13]~~ 6.80.5.13 NMAC.

(b)

If the department determines the suspension or revocation is not appropriate and justified, the department shall provide a written notice that identifies:

(i)

the continued term of approval for each of the training course codes and names for which the revocation or suspension was being considered; and

(ii)

the specific response and evidence that supported the finding that the suspension or revocation was not appropriate or justified.

C. If an approved provider is suspended or revoked, the department shall, within seven days of the action remove that approved provider's trainings from the listing on its website identified in Subsection D of 6.80.5.11 NMAC. The department shall also provide notice on its website that the approved provider has had its approval revoked ~~[for]~~ or suspended. [6.80.5.13 NMAC - N, 7/25/2017; A, 7/14/2020]

HISTORY OF 6.80.5 NMAC:
[RESERVED]

End of Adopted Rules

Other Material Related to Administrative Law

**GOVERNOR,
OFFICE OF THE**
EXECUTIVE ORDER 2020-053
**RENEWING THE STATE
OF PUBLIC HEALTH
EMERGENCY INITIALLY
DECLARED IN EXECUTIVE
ORDER 2020-004, OTHER
POWERS INVOKED IN THAT
ORDER, AND ALL OTHER
ORDERS AND DIRECTIVES
CONTAINED IN EXECUTIVE
ORDERS TIED TO THE
ONGOING PUBLIC HEALTH
EMERGENCY**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as “COVID-19.”

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020.

Public health organizations have implemented emergency measures intended to slow the spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states have declared a state of emergency

and implemented significant measures and deployed substantial resources to fight the spread of COVID-19.

On March 11, 2020, I issued Executive Order 2020-004, which declared a state of public health emergency under the Public Health Emergency Response Act and invoked powers provided by the All Hazards Emergency Management Act and the Emergency Licensing Act. That public health emergency was declared for a period of 30 days. The President approved a Major Disaster Declaration for the State of New Mexico on April 5, 2020. On April 6, 2020, I renewed and extended the public health emergency through April 30, 2020. On April 30, 2020, I renewed and extended the public health emergency through May 15, 2020. On May 15, 2020, I renewed and extended the public health emergency through May 31, 2020. On June 1, 2020, I renewed and extended the public health emergency through June 30, 2020.

Cases of COVID-19 and deaths related to COVID-19 continue to proliferate globally, nationally, and locally. The WHO reports more than 10 million worldwide infections and approximately 500,000 related deaths. According to the United States Centers for Disease Control and Prevention (“CDC”), more than 2.5 million people have been infected in the United States, including confirmed cases in every state, with more than 126,000 related deaths. The numbers of reported cases and deaths are continuing to increase significantly throughout the United States and in many parts of the world.

Although New Mexicans have worked together and made sacrifices to mitigate its spread, COVID-19 continues to pose a significant risk to our communities. As of June 29, 2020, the New Mexico Department of Health

reported 11,982 confirmed cases of COVID-19 in New Mexico, including cases in 31 of our State’s 33 counties, and at least 493 related deaths.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State’s response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and the laws of the State of New Mexico, hereby ORDER and DIRECT:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, and 2020-036 shall be renewed and extended through July 30, 2020.

2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding and the following orders: Executive

Order 2020-012; Executive Order 2020-016; Executive Order 2020-020; Executive Order 2020-021; Executive Order 2020-025; Executive Order 2020-037; and Executive Order 2020-039.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect immediately and shall remain in effect until July 30, 2020 unless renewed or until the Governor rescinds it.

**DONE AT THE EXECUTIVE
OFFICE THIS 1ST DAY OF JULY
2020**

ATTEST:

**/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE**

**WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE OF
NEW MEXICO**

**/S/ MICHELLE LUJAN
GRISHAM
GOVERNOR**

**GOVERNOR,
OFFICE OF THE**

EXECUTIVE ORDER 2020-054

**AMENDED ORDER
DIRECTING INDIVIDUALS
TRAVELING TO NEW
MEXICO TO SELF-ISOLATE
OR SELF-QUARANTINE
FOR A LIMITED PERIOD
AND DIRECTING THE NEW
MEXICO DEPARTMENT
OF HEALTH TO INITIATE
LAWFUL ISOLATION AND
QUARANTINE PROCEEDINGS
FOR INDIVIDUALS WHO DO
NOT SELF-ISOLATE OR SELF-
QUARANTINE**

On March 11, 2020, Executive Order 2020-004 declared a statewide public health emergency pursuant to the Public Health Emergency Response Act and invoked gubernatorial powers

under the All Hazard Emergency Management Act. See Order Declaring A State of Public Health Emergency and Invoking the Powers Provided by the All Hazard Emergency Management Act and the Emergency Licensing Act, Executive Order 2020-004. That Order is incorporated by reference herein.

Despite the best efforts of our State and local governments and the citizens of New Mexico, COVID- 19 has continued to spread and ongoing efforts are still necessary to mitigate and contain the spread of COVID- 19;

Many of the current confirmed positive cases of COVID-19 in New Mexico have resulted from interstate and international travel to New Mexico via airplane. Because some individuals infected with COVID-19 are asymptomatic or have very mild symptoms, travelers may be unaware they are carrying the virus. For this reason, persons arriving in New Mexico from out of state must self-isolate for a period of time sufficient to ensure that the public health and safety is not jeopardized.

The All Hazards Emergency Management Act vests my office with the authority to take all actions necessary to protect the public health, safety and welfare and to direct State agencies to provide aid during an emergency response. NMSA 1978, § 12-10-4(B)(3); NMSA 1978, § 12-10-1 O(A).

During a declared state of public health emergency, the Public Health Emergency Response Act authorizes the New Mexico Department of Health to isolate or quarantine individuals or groups as necessary to prevent or limit the spread of a threatening communicable disease, subject to certain statutory procedures. See NMSA 1978, §§ 12-IOA-7 to -11.

For the reasons set forth above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and

laws of the State of New Mexico, hereby order and direct as follows:

1. I direct that all persons who have arrived in New Mexico from a location outside of the State must self-isolate or self-quarantine for a period of at least 14 days from the date of their entry into the State of New Mexico or for the duration of their presence in the State, whichever is shorter.

2. The terms “self-isolate” or “self-quarantine” refer the voluntary physical separation of a person or group of people in a residence or other place of lodging. Any person who is self-isolating or self-quarantining may only leave a residence or place of lodging to receive medical care and should not allow others into the residence or place of lodging except for those providing medical care, emergency response, or other individuals designated by the New Mexico Department of Health. Family or household members may visit an isolated or quarantined person, but those visitors are directed to then self-isolate or self-quarantine for a period of no less than 14 days. All persons self-isolating or self-quarantining shall be responsible for all costs associated with the isolation or quarantine.

3. This Order’s direction to self-quarantine does not apply to persons employed by airlines, those performing public safety or public health functions, military personnel, federal employees, those employed by a federal agency or national defense contractor, emergency first responders, health care workers, those arriving in the State pursuant to a Court order, and persons who are employed or contracted by an “essential business”, as defined by the operative public health order addressing mass gathering restrictions and business closures, and who are traveling into New Mexico to conduct business activities.

4. Individuals who do not comply with the self-isolation and self-quarantine directives set

forth above shall be subject to involuntary isolation or quarantine by the New Mexico Department of Health under the Public Health Emergency Response Act.

5. I further direct the New Mexico Department of Health, with the cooperation and assistance of all other executive agencies, to take all necessary steps to ensure the screening and appropriate isolation and quarantine of individuals covered by this Order. This will include making temporary holds of individuals or groups, obtaining court orders requiring isolation or quarantine in compliance with the provisions of the Public Health Emergency Response Act, and imposing any civil or criminal penalties warranted under the Public Health Emergency Response Act and the Public Health Act when individuals do not self-isolate or self-quarantine as required by this Order.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect on July 1, 2020 and shall remain in effect through the duration of the public health emergency declared in Executive Order 2020-004 and any extensions of that emergency declaration or until it is rescinded.

**DONE AT THE EXECUTIVE
OFFICE THIS 1ST DAY OF JULY
2020**

ATTEST:
**/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE**

**WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE OF
NEW MEXICO**

**/S/ MICHELLE LUJAN
GRISHAM
GOVERNOR**

**HEALTH,
DEPARTMENT OF**

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
CABINET SECRETARY
KATHYLEEN M. KUNKEL**

JUNE 15, 2020

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, May 27, 2020, June 1, 2020, and June 12, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19.

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self-isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order loosens some restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; all New Mexicans should be staying in their homes for all but the most essential activities and services. When New Mexicans are not in their homes, they should strictly adhere to social distancing protocols to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this

Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby ORDERED that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;

B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries;

C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19; and

D. April 30, 2020 Public Health Emergency Order Clarifying that Polling Places Shall be Open as Required in the Election Code and Imposing Certain Social Distancing Restrictions on Polling Places.

3. The June 12, 2020 Public Health Emergency Order Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, and May 27, 2020, June 1, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a

Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through May 31, 2020;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to more than 9,700 and confirmed cases in the United States have risen to more than 2 million;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, social distancing is the sole way New Mexicans can minimize the spread of COVID-19 and currently constitutes the most effective means of mitigating the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -10, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by

the Department for the protection of public health.

NOW, THEREFORE, I, Kathyleen M. Kunkel, Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) "Essential business" means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

c. Childcare facilities necessary to provide services to those workers employed by essential businesses, essential non-profit entities, and other operating non-essential businesses;

d. Grocery stores, supermarkets, food banks, farmers' markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. All facilities routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;

g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers,

and transportation equipment manufacturers;

i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

j. Veterinary and livestock services, animal shelters, and facilities providing pet adoption, grooming, daycare, or boarding services;

k. Media services including television, radio, and newspaper operations;

l. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products. Contactless car washes, which are those that do not require person-to-person interaction between customers and employees, are permitted to operate;

m. Hardware stores and self-storage facilities;

n. Laundromats and dry cleaner services;

o. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

p. Funeral homes, crematoriums and cemeteries;

q. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

r. Real estate services including brokers, title companies, and related services;

s. Businesses providing mailing and shipping services, including post office boxes;

t. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

u. “Restaurants” are those operations

that generated at least 50% of their sales from dine-in services from the sale of food during the last calendar year. Sales made to customers for off-site consumption such as the sale of growlers, wholesale revenues, and to-go items are excluded from this calculation. “Local breweries” are those businesses licensed pursuant to NMSA 1978, § 60-6A-26.1. Restaurants and local breweries may provide dine-in service, but they may not exceed 50% occupancy of the maximum occupancy of any enclosed space on their premises, as determined by the relevant fire marshal or fire department. Restaurants and local breweries choosing to open must ensure that there is at least six feet of distance between tables. No more than six patrons may be seated at any single table. No bar or counter seating is permitted. Dine-in services shall be provided only to patrons who are seated at tables, and patrons may not consume food or beverages while standing. Restaurants and local breweries must operate in compliance with applicable occupancy restrictions and COVID-Safe Practices (CSPs) for Restaurants” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”. Local wineries and distillers may operate but only for carry out service.

v. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

w. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(2) “Individuals” means natural persons.

(3) “Gathering” means any grouping together of individuals in a single connected location.

(4) “Mass gathering” means any public gathering, private gathering, organized event, ceremony, or other grouping that brings together five (5) or more individuals in a single room or connected space,

confined outdoor space or an open outdoor space. “Mass gathering” does not include the presence of five (5) or more individuals where those individuals regularly reside. “Mass gathering” does not include individuals who are public officials or public employees in the course and scope of their employment.

(5) “Houses of worship” means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(6) “Close-contact business” includes barbershops, hair salons, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, gyms, and personal training services for up to two trainees.

(7) “Recreational facilities” include indoor movie theaters, museums, bowling alleys, miniature golf, arcades, amusement parks, concert venues, event venues, performance venues, go-kart courses, adult entertainment venues, and other places of indoor recreation or indoor entertainment.

(8) “Bars” are defined as food and beverage service establishments that derived more than 50% of their revenue in the prior calendar year from the sale of alcoholic beverages. Bars must remain closed during the pendency of this Public Health Order.

(9) “COVID-Safe Practices” (“CSPs”) are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”. That document may be obtained at the following link <https://cv.nmhealth.org/covidsafe-practices/>.

(10) “Places of lodging” means all hotels, motels, RV parks, co-located short-term condominium rentals with a central check-in desk, and short-term vacation rentals.

(11) “Retail space”

means any essential business that sells goods or services directly to consumers or end-users such as grocery stores or hardware stores and includes the essential businesses identified in the categories above: 1(d), 1(l), 1(m), 1(p), and 1(s).

I HEREBY DIRECT AS FOLLOWS:

(1) “Except as provided elsewhere in this Order, all “mass gatherings” are hereby prohibited under the powers and authority set forth in the Public Health Act.

(2) “Houses of worship” may hold services and other functions provided that they comply with the “COVID-Safe Practices (CSPs) for Houses of Worship” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”. Further, “houses of worship” may not exceed 25% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department. Nothing in this order is intended to preclude these faith-based institutions from holding services through audiovisual means.

(3) Essential businesses” may open but must operate in accordance with the pertinent “COVID-Safe Practices (CSPs)” section(s) of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers and also any identified occupancy restrictions.

(4) “Recreational facilities” must remain closed.

(5) Any business that is not identified as an “essential business” or a “recreational facility” may open provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department.

(6) Businesses identified as a “retail space” may operate provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined

by the relevant fire marshal or fire department. Any business opening pursuant to this provision must comply with the pertinent CSP’s set out in the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”.

(7) Indoor shopping malls are permitted to operate provided that the total number of persons within the mall at any given time does not exceed 25% of the maximum occupancy of the premises, as determined by the relevant fire marshal or fire department. Further, loitering within the indoor shopping mall is not permitted and food courts must remain closed.

(8) Gyms and similar exercise facilities may operate at up to 50% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department, but may not conduct group fitness classes.

(9) Public swimming pools may open but such facilities are limited to lane-swimming and lessons with up to two students only. Play and splash areas shall be closed. Public swimming pools may not exceed 50% of their maximum occupancy.

(10) If customers are waiting outside of a business, the business must take reasonable measures to ensure that customers maintain a distance of at least six-feet from other individuals and avoid person-to-person contact.

(11) Bars are not permitted to operate other than for take-out and delivery if otherwise permitted under their applicable licenses.

(12) “Places of lodging” shall not operate at more than 50% percent of maximum occupancy. Health care workers who are engaged in the provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays, as temporary housing, or for purposes of a quarantine or isolation period shall not be counted for purposes of determining maximum occupancy. All places

of lodging should comply with the “COVID-Safe Practices (CSPs) for Hotels, Resorts, & Lodging” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”. In the case of vacation rentals, occupancy shall be determined based upon the number properties managed by a property manager.

(13) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating, drinking, or exercising. Further, all individuals should comply with the “COVID-Safe Practices (CSPs) for All New Mexicans” section of the “All Together New Mexico: COVID Safe Practices for Individuals and Employers”.

(14) All casinos shall close during the pendency of this Order. This directive excludes those casinos operating on Tribal lands. Horse racing facilities may operate without spectators.

(15) This Order does not limit animal shelters, zoos, and other facilities with animal care operations from performing tasks that ensure the health and welfare of animals. Those tasks should be performed with the minimum number of employees necessary, for the minimum amount of time necessary, and with strict adherence to all social distancing protocols.

(16) Golf courses may open provided that they operate in accordance with the “COVID-Safe Practices (CSPs) for Golf Course” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers””. Restaurants and other golf course concessions must adhere to operative CSP’s.

(17) Outdoor tennis facilities may open for outdoor use only and provided that they operate in accordance with the pertinent “All Together New Mexico: COVID-Safe Practices for Individuals and Businesses”.

(18) State parks may open on a modified basis and subject

to staff availability. They may only be open for day use. Camping areas, visitor centers, and any other large enclosed indoor spaces normally open to the public shall remain closed.

(19) Summer youth programs may operate on a limited basis that complies with the pertinent CSP's set out in the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers".

(20) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(21) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-10A6 (2012).

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through June 30, 2020.

I FURTHER ADVISE the public to take the following preventive precautions:
- New Mexico citizens should stay at home and undertake

only those outings absolutely necessary for their health, safety, or welfare.

-- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.

-- Avoid crowds.

-- Avoid all non-essential travel including plane trips and cruise ships.

DONE AT THE EXECUTIVE OFFICE THIS 15TH DAY OF JUNE 2020

ATTEST:
/S/ MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

/S/ KATHLEEN M. KUNKEL
SECRETARY OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH

**HEALTH,
 DEPARTMENT OF**

**PUBLIC HEALTH ORDER
 NEW MEXICO DEPARTMENT OF HEALTH
 CABINET SECRETARY
 KATHYLEEN M. KUNKEL**

JUNE 30, 2020

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, May 27, 2020, June 1, 2020, June 12, 2020, and June 15, 2020 Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those

Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 ("COVID-19"). Continued social distancing and self isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order continues some loosened restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; all New Mexicans should **be staying in their homes for all but the most essential activities and services.** When New Mexicans are not in their homes, they should strictly adhere to social distancing protocols and wear face coverings to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A.
March 13, 2020 Public Health
Emergency Order to Temporarily
Limit Nursing Home Visitation
Due to COVID-19;

B. April 30,
2020 Public Health Emergency
Order Modifying Temporary
Restrictions on Non-Essential
Health Care Services, Procedures,
and Surgeries; and

C. March 24,
2020 Public Health Emergency
Order Temporarily Regulating the
Sale and Distribution of Personal
Protective Equipment Due to
Shortages Caused by COVID-19.

3. The June 15,
2020 Public Health Emergency
Order Amending the March 23,
2020, April 6, 2020, April 11,
2020, April 30, 2020, May 5,
2020, May 15, 2020, May 27,
2020, June 1, 2020, and June 12,
2020 Public Health Emergency
Orders Closing All Businesses
and Non-Profit Entities Except
for those Deemed Essential and
Providing Additional Restrictions
on Mass Gatherings Due to
COVID-19 is hereby amended as
follows:

ORDER

WHEREAS, on March
11, 2020, because of the spread
of the novel Coronavirus Disease
2019 (“COVID-19”), Michelle
Lujan Grisham, the Governor of
the State of New Mexico, declared
that a Public Health Emergency
exists in New Mexico under the
Public Health Emergency Response
Act, and invoked her authority
under the All Hazards Emergency
Management Act;

WHEREAS, Governor
Michelle Lujan Grisham has
renewed the declaration of a
Public Health Emergency through
July 30, 2020;

WHEREAS, COVID-19
continues to spread in New
Mexico and nationally. Since,
Executive Order 2020-004 was
issued, confirmed COVID-19
infections in New Mexico have

risen to approximately 12,000
and confirmed cases in the United
States have risen to more than 2.5
million;

WHEREAS, the further
spread of COVID-19 in the State
of New Mexico poses a threat
to the health, safety, wellbeing
and property of the residents in
the State due to, among other
things, illness from COVID-19,
illness-related absenteeism from
employment (particularly among
public safety and law enforcement
personnel and persons engaged in
activities and businesses critical to
the economy and infrastructure of
the State), potential displacement
of persons, and closures of schools
or other places of public gathering;

WHEREAS, social
distancing and the consistent and
proper use of face coverings
in public spaces are the most
effective ways New Mexicans
can minimize the spread of
COVID-19 and mitigate the
potentially devastating impact of
this pandemic in New Mexico; and

WHEREAS, the New
Mexico Department of Health
possesses legal authority pursuant
to the Public Health Act, NMSA
1978, Sections 24-1-1 to -40, the
Public Health Emergency Response
Act, NMSA 1978, Sections 12-
10A-1 to -10, the Department of
Health Act, NMSA 1978, Sections
9-7-1 to -18, and inherent
constitutional police powers of the
New Mexico state government, to
preserve and promote public health
and safety, to adopt isolation and
quarantine, and to close public
places and forbid gatherings of
people when deemed necessary
by the Department for the protection
of public health.

NOW, THEREFORE,
I, Kathyleen M. Kunkel, Cabinet
Secretary of the New Mexico
Department of Health, in accordance
with the authority vested in me by
the Constitution and the Laws of
the State of New Mexico, and as
directed by the Governor pursuant
to the full scope of her emergency
powers under the All Hazard

Emergency Management Act, do
hereby declare the current outbreak
of COVID-19 a condition of public
health importance as defined in
the New Mexico Public Health
Act, NMSA 1978, Section 24-1-
2(A) as an infection, a disease, a
syndrome, a symptom, an injury or
other threat that is identifiable on
an individual or community level
and can reasonably be expected
to lead to adverse health effects in
the community, and that poses an
imminent threat of substantial harm
to the population of New Mexico.

The following definitions
are adopted for the purposes of this
Order:

Definitions: As used in
this Public Health Order, the
following terms shall have the
meaning given to them, except
where the context clearly requires
otherwise:

(1) “Essential
business” means any business or
non-profit entity falling within one
or more of the following categories:

a. Health
care operations including hospitals,
walk-in-care health facilities,
pharmacies, medical wholesale
and distribution, home health care
workers or aides for the elderly,
emergency dental facilities,
nursing homes, residential health
care facilities, research facilities,
congregate care facilities,
intennediate care facilities
for those with intellectual
or developmental disabilities,
supportive living homes, home
health care providers, drug and
alcohol recovery support services,
and medical supplies and equipment
manufacturers and providers;

b. Homeless
shelters, food banks, and other
services providing care to indigent
or needy populations;

c.
Childcare facilities necessary to
provide services to those workers
employed by essential businesses,
essential non-profit entities, and
other operating non-essential
businesses;

d. Grocery stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. All facilities routinely used by law enforcement personnel, first responders, firefighters, emergency management personnel, and dispatch operators;

g. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

h. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products, microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

i. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

j. Veterinary and livestock services, animal shelters, and facilities providing pet adoption, grooming, daycare, or boarding services;

k. Media services including television, radio, and newspaper operations;

l. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products. Contactless car washes, which are those that do not require person-to-person interaction between customers and employees, are permitted to operate;

m. Hardware stores and self-storage facilities;

n. Laundromats and dry cleaner services;

o. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

p. Funeral homes, crematoriums and cemeteries;

q. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

r. Real estate services including brokers, title companies, and related services;

s. Businesses providing mailing and shipping services, including post office boxes;

t. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

u. “Restaurants” are those operations that generated at least 50% of their sales from dine-in services from the sale of food during the last calendar year. Sales made to customers for off-site consumption such as the sale of growlers, wholesale revenues, and to-go items are excluded from this calculation. “Local breweries” are those businesses licensed pursuant to NMSA 1978, § 60-6A-26.1. Restaurants and local breweries may provide dine-in service, but they may not exceed 50% occupancy of the maximum occupancy of any enclosed space on their premises, as determined by the relevant fire marshal or fire department. Restaurants and local breweries choosing to open must ensure that there is at least six feet of distance between tables. No more than six patrons may be seated at any single table. No bar or counter seating is permitted. Dine-in services shall be provided only to patrons who are seated at tables, and patrons may not consume food or beverages while standing. Restaurants and local breweries must operate in compliance with applicable occupancy restrictions and COVID-Safe Practices (CSPs) for Restaurants” section of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers”. Local wineries and distillers may operate but only for carryout service.

v. Professional services, such as legal or accounting services, but only where necessary to assist in compliance with legally mandated activities; and

w. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(2) “Individuals” means natural persons.

(3) “Gathering” means any grouping together of

individuals in a single connected location.

(4) "Mass gathering" means any public gathering, private gathering, organized event, ceremony, parade, or other grouping that brings together five (5) or more individuals in a single room or connected space, confined outdoor space or an open outdoor space. "Mass gathering" does not include the presence of five (5) or more individuals where those individuals regularly reside. "Mass gathering" does not include individuals who are public officials or public employees in the course and scope of their employment.

(5) "Houses of worship" means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(6) "Close-contact business" includes barbershops, hair salons, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, gyms, and personal training services for up to two trainees.

(7) "Recreational facilities" include indoor movie theaters, museums, bowling alleys, miniature golf, arcades, amusement parks, concert venues, event venues, performance venues, go-kart courses, adult entertainment venues, and other places of indoor recreation or indoor entertainment. Recreational facilities do not include those venues being utilized for governmental functions.

(8) "Bars" are defined as food and beverage service establishments that derived more than 50% of their revenue in the prior calendar year from the sale of alcoholic beverages. Bars must remain closed during the pendency of this Public Health Order.

(9) "COVID-Safe Practices" ("CSPs") are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the

document titled "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". That document may be obtained at the following link <https://cv.nmhealth.org/covid-safe-practices/>.

(10) "Places of lodging" means all hotels, motels, RV parks, co-located short-term condominium rentals with a central check-in desk, and short-term vacation rentals.

(11) "Retail space" means any essential business that sells goods or services directly to consumers or end-users such as grocery stores or hardware stores and includes the essential businesses identified in the categories above: l(d), l(1), l(m), l(p), and l(s).

I HEREBY DIRECT AS FOLLOWS:

(1) Except as provided elsewhere in this Order, all "mass gatherings" are hereby prohibited under the powers and authority set forth in the Public Health Act. An indoor or outdoor parade of any sort is a mass gathering; parades are therefore prohibited under this Order.

(2) "Houses of worship" may hold services and other functions provided that they comply with the "COVID-Safe Practices (CSPs) for Houses of Worship" section of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". Further, "houses of worship" may not exceed 25% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department. Nothing in this order is intended to preclude these faith-based institutions from holding services through audiovisual means.

(3) Essential businesses" may open but must operate in accordance with the pertinent "COVID-Safe Practices (CSPs)" section(s) of the "All Together New Mexico: COVID-Safe Practices for Individuals and

Employers and also any identified occupancy restrictions.

(4) "Recreational facilities" must remain closed.

(5) Any business that is not identified as an "essential business" or a "recreational facility" may open provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business's premises, as determined by the relevant fire marshal or fire department.

(6) Businesses identified as a "retail space" may operate provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business's premises, as determined by the relevant fire marshal or fire department. Any business opening pursuant to this provision must comply with the pertinent CSP's set out in the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". A "retail space" may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

(7) Indoor shopping malls are permitted to operate provided that the total number of persons within the mall at any given time does not exceed 25% of the maximum occupancy of the premises, as determined by the relevant fire marshal or fire department. Further, loitering within the indoor shopping mall is not permitted and food courts must remain closed.

(8) Gyms and similar exercise facilities may operate at up to 50% of the maximum occupancy of any enclosed space on the business's premises, as determined by the relevant fire marshal or fire department, but may not conduct group fitness classes.

(9) Public swimming pools may open but such facilities are limited to lane-swimming and lessons with up to two students only. Play and splash areas shall be closed. Public swimming pools may not exceed 50% of their maximum occupancy.

(10) If customers are waiting outside of a business, the business must take reasonable measures to ensure that customers maintain a distance of at least six-feet from other individuals and avoid person-to-person contact.

(11) Bars are not permitted to operate other than for take-out and delivery if otherwise permitted under their applicable licenses.

(12) "Places of lodging" shall not operate at more than 50% percent of maximum occupancy. Health care workers who are engaged in the provision of care to New Mexico residents or individuals utilizing lodging facilities for extended stays, as temporary housing, or for purposes of a quarantine or isolation period shall not be counted for purposes of determining maximum occupancy. All places of lodging should comply with the "COVID-Safe Practices (CSPs) for Hotels, Resorts, & Lodging" section of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". In the case of vacation rentals, occupancy shall be determined based upon the number properties managed by a property manager.

(13) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating, drinking, or exercising. Further, all individuals should comply with the "COVID-Safe Practices (CSPs) for All New Mexicans" section of the "All Together New Mexico: COVID Safe Practices for Individuals and Employers".

(14) All casinos shall close during the pendency of this

Order. This directive excludes those casinos operating on Tribal lands. Horse racing facilities may operate without spectators.

(15) This Order does not limit animal shelters, zoos, and other facilities with animal care operations from performing tasks that ensure the health and welfare of animals. Those tasks should be performed with the minimum number of employees necessary, for the minimum amount of time necessary, and with strict adherence to all social distancing protocols.

(16) Golf courses may open provided that they operate in accordance with the "COVID-Safe Practices (CSPs) for Golf Course" section of the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". Restaurants and other golf course concessions must adhere to operative CSP's.

(17) Outdoor tennis facilities may open for outdoor use only and provided that they operate in accordance with the pertinent "All Together New Mexico: COVID-Safe Practices for Individuals and Businesses".

(18) State parks may open on a modified basis and subject to staff availability. They may only be open for day use. Camping areas, visitor centers, and any other large enclosed indoor spaces normally open to the public shall remain closed.

(19) Summer youth programs may operate on a limited basis that complies with the pertinent CSP's set out in the "All Together New Mexico: COVID-Safe Practices for Individuals and Employers".

(20) The New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure

compliance with this Order.

(21) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-IOA- 6 (2012).

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health irnp0liance shall not abrogate any disease-repolling requirements set forth in the New Mexico Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect immediately and remain in effect through July 15, 2020.

I FURTHER ADVISE the public to take the following preventive precautions:

-- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**

-- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexican s can purchase necessary goods.

-- Avoid crowds.

-- Avoid all non-essential travel including plane trips and cruise ships.

DONE AT THE EXECUTIVE OFFICE THIS 30TH DAY OF JUNE 2020

ATTEST:
/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE

WITNESS MY HAND AND THE
GREAT SEAL OF THE STATE OF
NEW MEXICO

/S/ KATHLEEN M. KUNKEL
SECRETARY OF THE STATE OF
NEW MEXICO DEPARTMENT
OF HEALTH

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

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Issue 3	January 30	February 11
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Issue 5	February 27	March 10
Issue 6	March 12	March 24
Issue 7	March 26	April 7
Issue 8	April 9	April 21
Issue 9	April 23	May 5
Issue 10	May 7	May 19
Issue 11	May 28	June 9
Issue 12	June 11	June 23
Issue 13	July 6	July 14
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Issue 24	December 17	December 29

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