

# New Mexico Register

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

**Volume XXXIV - Issue 1 - January 18, 2023**

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## **The New Mexico Register**

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# New Mexico Register

Volume XXXIV, Issue 1

January 18, 2023

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## Notices of Rulemaking and Proposed Rules

### SPACEPORT AUTHORITY

#### NOTICE OF PROPOSED RULEMAKING

**Public Hearing.** The New Mexico Spaceport Authority (NMSA) gives notice that it will conduct a public hearing for the proposed rulemaking on Wednesday, February 22, 2023, at 1 p.m. (MST) at the Spaceport America Offices, located at 4605 Research Park Circle, Suite A, Las Cruces, NM 88001. The proposed rule and meeting details may be accessed on the Spaceport America website: <https://www.spaceportamerica.com/governance/>.

The purpose of the rule hearing is to obtain input and public comment on the proposed rule. Attendees who wish to provide public comment on record will be given the opportunity to make a statement concerning the proposed rulemaking. Written comment will also be accepted at the hearing.

**Purpose of Proposed Rule.** The purpose of the proposed rule is to codify the bylaws of the NMSA Board of Directors.

**Summary of Proposed Rule.** The proposed rule codifies the bylaws of the NMSA Board of Directors.

**Statutory Authority.** Statutory authority for this rulemaking is granted under the Spaceport Development Act, 58-31-5, NMSA 1978.

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

#### Mailing Address

New Mexico Spaceport Authority  
4605 Research Park Circle, Ste. A  
Las Cruces, NM 88012

#### E-Mail Address

Melissa.Force2@spaceportamerica.com

Written comments must be received no later than 5 p.m. (MST) on Wednesday, February 22, 2023. NMSA encourages the early submission of written comments.

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 Marisela Cortez at (575) 267-8500 as soon as possible before the date set for the public hearing.

### SUPERINTENDENT OF INSURANCE, OFFICE OF

#### NOTICE OF PROPOSED RULEMAKING

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance (“OSI” or “Superintendent”) will hold an in-person public hearing regarding the repealing of 13.10.22.8 NMAC – ACCESS TO HEALTH CARE SERVICES and adding a new rule 13.10.38 NMAC – NETWORK ADEQUACY. This hearing will commence on **February 20, 2023, at 10:00 a.m.**

**PURPOSE OF THE PROPOSED RULE:** The purpose of this rule is to formalize OSI’s network adequacy expectations and standards, which thus far, have been issued through Guidance. Additionally, New Mexico is now a State-Based Exchange and many federal regulations that previously governed Qualified Health Plans no longer apply. OSI needs to promulgate state-based regulations to address the gaps left by the transition from a Federally Facilitated Exchange to State-Based Exchange. OSI further intends to simplify Network Adequacy standards by ensuring that all plans under our jurisdiction are subject to the same standards.

### STATUTORY AUTHORITY:

Sections 59A-1-18, 59A-2-9, 59A-4-1, 59A-16-1, 59A-18-16.2, 59A-22-1, 59A-22A-7, 59A-23-1, 59A-44-41, 59A-46-23, 59A-47-5, 59A-57-4., and 59A-61-5 NMSA 1978.

### TO ATTEND THE HEARING:

This meeting will be held in-person at:

Office of Superintendent of Insurance  
1120 Paseo de Peralta, 4<sup>th</sup> Floor  
Hearing Room  
Santa Fe, NM 87501

The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the public hearing from members of the public and other interested parties. Any updates concerning the hearing date, time, or location will be available by subscribing to the “Rulemaking and Ratemaking” newsletter at: <https://newsletter.osi.state.nm.us/>.

Copies of the Notice of Proposed Rulemaking and proposed new rules are available by electronic download from the OSI eDocket <https://edocket.osi.state.nm.us/guest/case-view/5825> or by requesting a copy by calling (505) 372-9135.

Written comments will be accepted through 4:00 p.m. on February 20, 2023. Responses to written comments or oral comments will be accepted through 4:00 p.m. on March 2, 2023. All comments shall be filed electronically through the OSI eDocket <https://edocket.osi.state.nm.us/guest/case-view/5825> or mailed to:

**OSI Records and Docketing  
NM Office of Superintendent of Insurance  
P.O. Box 1689, Santa Fe, NM 87504-1689**

For help submitting a filing, please contact [OSI-docketfiling@state.nm.us](mailto:OSI-docketfiling@state.nm.us).

The below docket number must be indicated on filed comments.

Docket No. 2023-001  
IN THE MATTER OF NEW RULE  
CODIFIED AT 13.10.38 NMAC -  
NETWORK ADEQUACY

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

**SPECIAL NEEDS:** Any person with a disability requiring special assistance to participate in the hearing should contact Freya Joshi at 505-372-9135 no later than ten (10) business days prior to the hearing.

DONE AND ORDERED this 18th day of January, 2023.  
/S/RUSSELL TOAL

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

## Adopted Rules

### Effective Date and Validity of Rule Filings

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

### PUBLIC EDUCATION DEPARTMENT

At a public hearing on January 3, 2023, the Public Education Department agreed to repeal 6.60.6 NMAC, Continuing Licensure for Licensed Educators in New Mexico, filed 10/16/2001, and replace it with 6.60.6 NMAC, Continuing Licensure for Licensed Educators in New Mexico, adopted January 5, 2023, and effective January 18, 2023.

At a public hearing on January 3, 2023, the Public Education Department agreed to repeal 6.69.4 NMAC, Performance Evaluation System Requirements for Teachers, filed 09/30/2003, and replace it with 6.69.4 NMAC, Performance Evaluation System Requirements for Teachers, adopted January 5, 2023, and effective January 18, 2023.

At a public hearing on January 3, 2023, the Public Education Department agreed to repeal 6.69.5 NMAC, Performance Evaluation System Requirements for Librarian-Teachers, filed 10/17/2005, and replace it with 6.69.5 NMAC, Performance Evaluation System Requirements for Librarian-Teachers, adopted 01/05/2023 and effective January 18, 2023.

### PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND  
SECONDARY EDUCATION  
CHAPTER 60 SCHOOL  
PERSONNEL - GENERAL  
PROVISIONS  
PART 6 CONTINUING  
LICENSURE FOR LICENSED  
EDUCATORS IN NEW MEXICO**

#### 6.60.6.1 ISSUING

**AGENCY:** Public Education Department, hereinafter the department.

[6.60.6.1 NMAC – Rp, 6.60.6.1 NMAC, 1/18/2023]

#### 6.60.6.2 SCOPE:

Individuals holding New Mexico licensure who are seeking continuing licensure.

[6.60.6.2 NMAC – Rp, 6.60.6.2 NMAC, 1/18/2023]

#### 6.60.6.3 STATUTORY

**AUTHORITY:** Sections 9-24-8, 22-2-1, 22-2-2, 22-2-8.1, and 22-10A-3 NMSA 1978.

[6.60.6.3 NMAC – Rp, 6.60.6.3 NMAC, 1/18/2023]

#### 6.60.6.4 DURATION:

Permanent.

[6.60.6.4 NMAC – Rp, 6.60.6.4 NMAC, 1/18/2023]

#### 6.60.6.5 EFFECTIVE

**DATE:** January 18, 2023, unless a later date is cited at the end of a section.

[6.60.6.5 NMAC – Rp, 6.60.6.5 NMAC, 1/18/2023]

#### 6.60.6.6 OBJECTIVE:

This rule establishes the requirements for individuals holding New Mexico licensure who are seeking continuing licensure.

[6.60.6.6 NMAC – Rp, 6.60.6.6 NMAC, 1/18/2023]

#### 6.60.6.7 DEFINITIONS:

**A. “Advancement program level I – level II”** or “APLI-II” means a series of five micro-credentials, aligned with the department-approved educator evaluation system, that a teacher with a level 1 teaching license shall successfully complete and

demonstrate mastery in before progressing to a level 2 teaching license.

**B. “Advancement program level II – level III”** or “APLI-II-III” means a series of five micro-credentials, aligned with the department-approved educator evaluation system, that a teacher with a level 2 teaching license shall successfully complete and demonstrate mastery in before progressing to a level 3-A teaching license.

**C. “Level 1 teaching license”** means a provisional license issued for up to five years of teaching that gives a beginning teacher the opportunity, through a formal mentorship program and APLI-II, for additional preparation to be a quality teacher.

**D. “Level 2 teaching license”** means a professional license issued to a teacher who may choose to remain at level 2 for the remainder of their career and who is primarily responsible for ensuring students meet or exceed the department’s academic content and performance standards.

**E. “Level 3-A teaching license”** means a master teaching license that is the highest level of teaching competence for teachers who choose to advance as instructional leaders in the teaching profession and undertake greater responsibilities, such as curriculum development, peer intervention, and mentoring.

**F. “Full school year”** means a minimum of 1080 instructional hours in a school year for teachers of students in seventh through 12th grades, 990 hours for teachers of students in full-day kindergarten through fifth grade, or 450 hours for teachers of students in half-day kindergarten, during which the teacher is the teacher of record



or serves as an instructional coach or resource teacher in at least one class each school year while holding a standard teaching license. An equivalent number of instructional hours may be accepted for those teachers who do not teach every day. Instructional hours may include teaching in summer school, extended learning time programs, or similar educational settings.

**G. “Governing authority”** means the policy-setting body of a school district, charter school, constitutional special school, regional education cooperative, or final decisionmaker of another state agency.

**H. “Micro-credential”** means a competency-based process made up of several courses, each focused on a discrete skill or area aligned with the educator evaluation system.

[6.60.6.7 NMAC – Rp, 6.60.6.7 NMAC, 1/18/2023]

**6.60.6.8 [RESERVED]**  
[6.60.6.8 NMAC – Repealed, 6.60.6.8 NMAC, 1/18/2023]

#### **6.60.6.9 REQUIREMENTS FOR ADVANCEMENT AND RENEWAL OF TEACHING LICENSES:**

**A.** A teacher holding a level 1 teaching license and seeking a level 2 teaching license shall meet the following requirements:

(1) completion of three full school years of teaching experience as the teacher of record holding a level 1 teaching license with successful annual evaluations as determined by the governing authority. The governing authority shall consider the effectiveness ratings from the department-approved educator evaluation system to determine whether the teacher has had successful evaluations. The governing authority shall consider all annual evaluations that have occurred during the term of the level 1 teaching license, except that, before being eligible for advancement to a level 2 teaching license, a teacher who has completed one full school

year of teaching in another state or country shall teach for two full school years holding a level 1 teaching license. A governing authority may require completion of up to two full school years of additional teaching experience in New Mexico of a teacher who:

(a) has completed three full school years of teaching experience while holding a level 1 teaching license in New Mexico;

(b) has completed three full school years of teaching experience while holding a level 1 teaching license in another state or country; or

(c) has obtained a level 1 teaching license through reciprocity under 6.60.5 NMAC;

(2) submission of an application for licensure advancement, which may be submitted up to three months in advance of the completion of the requirement in Paragraph (1) of Subsection A of 6.60.6.9 NMAC, with final approval dependent upon the completion of three full school years of teaching experience while holding a level 1 teaching license. The application shall include the governing authority’s assurance that the governing authority considered the teacher’s effectiveness ratings from the department-approved educator evaluation system during the term the teacher held a level 1 teaching license and the governing authority’s determination of successful annual evaluations. The teacher may apply for advancement by:

(a) establishing an effective or better rating on the department-approved educator evaluation system, as determined by the department;

(b) successfully completing APLI-II or receiving certification from the national board for professional teaching standards; and

(3) completion of the mentorship requirement for beginning teachers in 6.60.10 NMAC.

**B.** A teacher holding a level 2 teaching license and seeking a level 3-A teaching license shall meet the following requirements:

(1) completion of three full school years of teaching experience as the teacher of record holding a level 2 teaching license with successful annual evaluations under the department-approved educator evaluation system. The governing authority shall consider all annual evaluations that have occurred during the term the teacher held a level 2 teaching license. Before being eligible for advancement to a level 3-A teaching license, a governing authority may require completion of up to two school full years of teaching experience in New Mexico of a teacher who:

(a) has four or more full school years of teaching experience while holding a level 2 teaching license in New Mexico or another state or country; or

(b) has obtained a level 2 teaching license through reciprocity in 6.60.4 NMAC;

(2) successful completion of a post-baccalaureate degree from a regionally accredited college or university; and

(3) submission of an application for licensure advancement, which may be submitted up to three months in advance of the completion of the requirement of Paragraph (1) of Subsection A of 6.60.9 NMAC, with final approval dependent upon the completion of three full school years of teaching experience while holding a level 2 teaching license. The application shall include the governing authority’s assurance that the governing authority considered the teacher’s effectiveness ratings from the department-approved educator evaluation system during the term the teacher held a level 2 teaching license and the governing authority’s determination of successful annual evaluations. The teacher may apply for advancement by:

(a) establishing an effective or better rating on the department-approved

educator evaluation system, as determined by the department; and

(b) successfully completing APLII-III or receiving certification from the national board for professional teaching standards;

C. A teacher holding a level 2 teaching license or a level 3-A teaching license who is seeking to renew their license shall meet the requirements of Paragraph (1) or Paragraph (2) of this subsection. The governing authority shall consider the effectiveness ratings from the department-approved educator evaluation system to determine whether the teacher has had successful evaluations. The governing authority shall consider all annual evaluations that have occurred during the term of the license the applicant is seeking to renew.

(1) A teacher shall submit, along with the fee specified in 6.60.7.8 NMAC:

(a) a completed application for licensure renewal to the department; and

(b) verification from the governing authority by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has:

(i) satisfactorily demonstrated the competencies for the current level of license; and

(ii) met other requirements of the department-approved educator evaluation system for the level of license the applicant is seeking to renew as evidenced by the teacher's annual evaluations as determined by the governing authority.

(2) If a teacher does not satisfactorily demonstrate the competencies for the level of license or other requirements of the department-approved educator evaluation system for licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, might not be issued a license.

D. If a teacher holding a level 3-A teaching license does not satisfactorily meet the department-approved educator evaluation system for a level 3-A teaching license renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, might not be issued a level 3-A teaching license. In that case, the applicant may be issued a level 2 teaching license if the governing authority by which the applicant has been most recently employed as of the date of the application for licensure renewal, submits to the department verification that the applicant has satisfactorily met the high objective uniform standards of evaluation for a level 2 teaching license as evidenced by the teacher's annual evaluations.

E. A person who obtains a level 1 alternative license shall complete the requirements for this license by the end of the second year. An extension may be granted by the department if adequate progress toward completion has been made. A person who fails to complete the requirements within the extended period shall not be issued another alternative license in the same or another teaching field or endorsement area. Multiple extensions shall not be granted.  
[6.60.6.9 NMAC – Rp, 6.60.6.9 NMAC, 1/18/2023]

#### **6.60.6.10 REQUIREMENTS FOR ADVANCEMENT AND RENEWAL OF LICENSES OTHER THAN TEACHING:**

A. A person holding a level 1 teaching license and seeking a level 2 teaching license shall meet the following requirements:

(1) submission of a completed application for continuing licensure to the department;

(2) submission of verification to the department that the applicant has demonstrated the competencies required for a level 2 teaching license by the governing authority by which the applicant has been most recently employed as of the

date of the application for continued licensure.

B. A person holding a level 2 teaching license and seeking a level 3-A teaching license shall meet the following requirements:

(1) submission of a completed application for continuing licensure shall be submitted to the department;

(2) successful completion of a post-baccalaureate degree from a regionally accredited college or university;

(3) the governing authority by which the applicant was most recently employed as of the date of the application for continued licensure shall submit to the department verification that the applicant has demonstrated the competencies required for a level 3-A teaching license.

C. A person holding a level 2 teaching license or level 3-A teaching license who is seeking continuing licensure shall submit, along with the fee specified in 6.60.7.8 NMAC:

(1) a completed application for licensure renewal to the department; and

(2) verification from the governing authority by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has demonstrated the competencies required by the department.

D. A person holding a level 2 teaching license and a level 3 counselor license seeking a level 3-B administrator license shall follow the requirements and procedures set forth in 6.62.2.8 NMAC.

E. A person holding a level 3-B administrator license and seeking continuing licensure pursuant to the provisions of this rule shall meet the requirements of Paragraphs (1) or (2) of Subsection C of this section.

[6.60.6.10 NMAC – Rp, 6.60.6.10 NMAC, 1/18/2023]

#### **6.60.6.11 EXCEPTIONS:**

A. The provisions

of this paragraph shall apply to an individual holding a level 1, level 2, or level 3-A teaching license who, in exigent circumstance, is unable to secure verification of the required competencies for licensure renewal. As used in this paragraph, “exigent circumstance” means:

(1) the non-availability of the governing authority by which the applicant has been most recently employed;

(2) the licensed individual has not been employed in elementary or secondary education during the term of the license; or

(3) when an intern or level 1 teacher has not been employed as the teacher of record in a New Mexico or out-of-state public school for the total number of years authorized by the license.

**B.** A person seeking to renew their current level of licensure who, in exigent circumstances, is unable to secure verification of the required competencies shall submit a sworn statement asserting the exigent circumstance, and may be granted licensure or licensure renewal as follows:

(1) an applicant or licensed individual with an exigent circumstance as described in Paragraphs (1) and (2) of Subsection A of this Section may be granted a five-year level 1 license.

(2) an intern with an exigent circumstance as described in Paragraph (3) of Subsection A of this section may be granted a one-time license renewal with an effective period equal to the amount of time of non-employment, except that any period of non-employment less than a full school year, but more than 90 days, shall constitute a full school year; and

(3) a level 1 teacher with an exigent circumstance as described in Paragraph (3) of Subsection A of this section may be granted no more than three level 1 teaching license renewals with effective periods equal to the amount of time of non-employment, except that any period of non-employment

less than a full school year, but more than 90 days, shall constitute a full school year; a teacher holding a level 1 teaching license who remains unemployed after their last level 1 teaching license renewal may renew subsequent level 1 teaching licenses following Paragraph (2) of Subsection A of this section, but any previous years of teaching experience counted toward advancement to a level 2 teaching license become void.

**C.** If a person seeking licensure renewal cannot demonstrate an exigent circumstance or whose level 1 teaching license has expired, they may not reapply until after three years after the expiration date of their current license. A level 1 teaching license granted pursuant to this paragraph shall be subject to advancement to a level 2 teaching license in the same manner as other such licenses.

**D.** A person seeking to renew a level 2 teaching license, a level 3-A teaching license, or a level 3-B license who has worked in education but not in an elementary or secondary school setting or who has retired from or has not continued to work in elementary and secondary education under a New Mexico license during the effective period of the license, shall submit a sworn statement asserting that the person has not worked in an elementary or secondary school setting during the effective period of the license, and may renew the license at the current level held.

[6.60.6.11 NMAC – Rp, 6.60.6.9 NMAC, 1/18/2023]

#### **6.60.6.12**

##### **IMPLEMENTATION:**

**A.** Absent the exceptions provided in Paragraphs (2) and (3) of Subsection A of 6.60.6.11 NMAC, a level 1 teaching license shall not be renewed and shall be deemed to have lapsed upon the date of expiration, immediately terminating authorization to work as a teacher in New Mexico public schools.

**B.** Continuing level 2 and level 3-A licenses shall be granted for nine years.

**C.** Applications for a level 2 teaching license and level 3-A teaching license advancement or renewal must be submitted no later than June 30 of the year following expiration of the license. After that date, the license shall be deemed to have lapsed.

**D.** A level 2 teaching license, a level 3 teaching license, or a level 3-A teaching license that has lapsed may be renewed by submission of:

(1) evidence of having satisfactorily carried out the duties as previously authorized by the lapsed license for five full school years; and

(2) verification from the governing authority by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has demonstrated the competencies for the level of lapsed licensure as evidenced by annual evaluations. If the applicant cannot provide verification of five years of experience and competency from the governing authority by which the applicant has been most recently employed, the applicant shall be issued a level 1 license.

[6.60.6.12 NMAC – Rp, 6.60.6.12 NMAC, 1/18/2023]

#### **HISTORY OF 6.60.6 NMAC:**

**PRE-NMAC HISTORY:** The material in this regulation was derived from that previously filed with the state records center and archives under SBE Regulation 87-6, Continuing Licensure for Licensed Educators in New Mexico, filed June 15, 1987, and SBE Regulation 87-6, Amendment No. 1, Continuing Licensure for Licensed Educators in New Mexico, filed April 3, 1995.

#### **HISTORY OF REPEALED MATERIAL:**

6.60.6 NMAC, Continuing Licensure for Licensed Educators in New Mexico, filed 10/16/2001, was repealed and replaced by 6.60.6 NMAC, Continuing Licensure for Licensed Educators in New Mexico,

effective 9/30/2003.

6.60.6 NMAC, Continuing Licensure for Licensed Educators in New Mexico, filed 9/30/2003, was repealed and replaced by 6.60.6 NMAC, Continuing Licensure for Licensed Educators in New Mexico, effective 1/18/2023.

## PUBLIC EDUCATION DEPARTMENT

### TITLE 6        PRIMARY AND SECONDARY EDUCATION CHAPTER 69   SCHOOL PERSONNEL - PERFORMANCE PART 4        PERFORMANCE EVALUATION SYSTEM REQUIREMENTS FOR TEACHERS

#### 6.69.4.1        ISSUING

**AGENCY:** Public Education Department, hereinafter the department.

[6.69.4.1 NMAC - Rp, 6.69.4.1 NMAC, 1/18/2023]

#### 6.69.4.2        SCOPE:

Performance evaluation system requirements for teachers.

[6.69.4.2 NMAC - Rp, 6.69.4.2 NMAC, 1/18/2023]

#### 6.69.4.3        STATUTORY

**AUTHORITY:** Sections 9-24-8, 22-2-1, 22-2-2, 22-2-8.1, and 22-10A-3 NMSA 1978.

[6.69.4.3 NMAC - Rp, 6.69.4.3 NMAC, 1/18/2023]

#### 6.69.4.4        DURATION:

Permanent.

[6.69.4.4 NMAC - Rp, 6.69.4.4 NMAC, 1/18/2023]

#### 6.69.4.5        EFFECTIVE

**DATE:** January 18, 2023, unless a later date is cited at the end of a section.

[6.69.4.5 NMAC - Rp, 6.69.4.5 NMAC, 1/18/2023]

#### 6.69.4.6        OBJECTIVE:

This rule establishes the requirements for a department-approved educator

evaluation system for teachers. This rule identifies the specific evaluation and supervision standards and indicators and requirements for a competency-based evaluation system for teachers.

[6.69.4.6 NMAC - Rp, 6.69.4.6 NMAC, 1/18/2023]

#### 6.69.4.7        DEFINITIONS:

**A.        “Advancement program level I – level II” or “APLI-II”** means a series of five micro-credentials, aligned with the department-approved educator evaluation system, that a teacher with a level 1 license shall successfully complete and demonstrate mastery in before progressing to a level 2 license.

**B.        “Advancement program level II – level III” or “APLII-III”** means a series of five micro-credentials, aligned with the department-approved educator evaluation system, that a teacher with a level 2 teaching license shall successfully complete and demonstrate mastery in before progressing to a level 3-A teaching license.

**C.        “Core academic subjects”** means English, language arts, reading, mathematics, science, the arts - including music and visual arts - and social studies - including civics, government, economics, history, and geography - and modern and classical languages, Native American languages, and cultures of New Mexico tribes and pueblos.

**D.        “Full school year”** means a minimum of 1080 instructional hours in a school year for teachers of students in seventh through 12th grades, 990 hours for teachers of students in full-day kindergarten through fifth grade, or 450 hours for teachers of students in half-day kindergarten, during which the teacher is the teacher of record or serves as an instructional coach or resource teacher in at least one class each school year while holding a standard teaching license. An equivalent number of instructional hours may be accepted for those teachers who do not teach every day. Instructional hours may include

teaching in summer school, extended learning time programs, or similar educational settings.

**E.        “Micro-credential”** means a competency-based process made up of several courses, each focused on a discrete skill or area aligned with the educator evaluation system.

[6.69.4.7 NMAC - Rp, 6.69.4.7 NMAC, 1/18/2023]

#### 6.69.4.8        REQUIREMENTS:

**A.        The school district** shall ensure, through proper annual teaching assignment and professional development plans and evaluations, that all teachers are certified and endorsed to teach core academic subjects.

**B.        Every public school teacher** shall have an annual performance evaluation based on a professional development plan that meets the requirements of the department-approved evaluation system.

[6.69.4.8 NMAC - Rp, 6.69.4.8 NMAC, 1/18/2023]

### 6.69.4.9        IMPLEMENTATION OF THE EDUCATOR EVALUATION SYSTEM- FOR DEMONSTRATING COMPETENCE IN THE CORE ACADEMIC SUBJECTS: A

A teacher of the core academic subjects employed as a general education teacher in a school district that qualifies as a rural school district under the current authorization of the Elementary and Secondary Education Act of 1965 (20) U.S.C. 6301, may fulfill the requirements in Subsections A and B of 6.69.4.9 NMAC and either the requirement of Paragraphs (2)-(3) of Subsection C or Paragraphs (2)-(3) of Subsection D of 6.69.4.9 NMAC within three full school years of the date of hire as long as the teacher is certified and endorsed in at least one core academic subject when hired in a qualifying rural school district. A new to the profession special education teacher employed in any school district may fulfill the requirements in Paragraphs (2)-(3) of Subsection C or Paragraphs (2)-(3) of Subsection



D of 6.69.4.9 NMAC within two full school years of initial employment in any school district if the teacher is certified and endorsed in either language arts, mathematics, or science when hired. The candidate shall:

**A.** have successful annual evaluations for two full school years prior to the evaluation; and

**B.** have two complete school years of successful teaching and either;

**C.** complete credit hours at a regionally accredited college or university in the core academic subject in which the candidate is seeking to demonstrate competence, as follows:

**(1)** for K-8 elementary licensed teachers or pre K-12 special education licensed teachers teaching in a self-contained elementary classroom, 24 lower or upper division credit hours across the elementary education core academic subjects of language arts, social studies, mathematics, and science, with at least six credit hours in each core area;

**(2)** for K-8 elementary licensed teachers teaching in a middle school, and pre K-12 special education licensed teachers teaching in a middle or high school, 18 lower or upper division credit hours in each core academic subject the teacher teaches;

**(3)** for 7-12 secondary, 5-9 middle level, and pre K-12 specialty area licensed teachers teaching in a middle school, junior high school, or high school, 18 credit hours, 12 of which must be upper division in each core academic subject the teacher teaches; or

**D.** complete the following combination of coursework through a regionally accredited college or university and by portfolio:

**(1)** for K-8 licensed elementary teachers teaching in a self-contained elementary classroom, and for a pre K-12 special education licensed teachers teaching special education students at any grade level who are assessed against alternative achievement standards, 12 lower or upper division credit

hours across the elementary education curriculum areas;

**(2)** for K-8 licensed elementary teachers teaching in a middle school, and for a pre K-12 special education licensed teachers teaching special education students in a middle school or high school, upper or lower division credit hours as follows:

**(a)** 12 semester hours in a single core subject area; or

**(b)** 15 semester hours in two core subject areas, with at least six hours in each one; or

**(c)** 18 semester hours in three core subject areas, with at least six hours in each one; or

**(d)** 24 semester hours in four core subject areas, with at least six hours in each one;

**(3)** for 7-12 secondary, 5-9 middle level, and pre K-12 specialty area licensed teachers, the credit hours, specified in Paragraph (2) of Subsection D of 6.69.4.9 NMAC all at the upper division level;

**(4)** demonstrate to a local panel of teachers the requirements of Subparagraphs (a) or (b) below:

**(a)** mastery of the competence in the instructional strand of the PED's teacher competencies and indicators for the level of licensure the candidate holds in each core academic subject in which the teacher seeks to demonstrate that the teacher is qualified by submitting evidence from (i), (ii) and (iii) as follows:

**(i)** documentation from Paragraph (1) of Subsection E of 6.69.4.11 NMAC; and

**(ii)** observation summaries, by each panel member, of the candidate teaching in the area for which the teacher is applying; observations by the panel may be done in person or by video; and

**(iii)** at least two observation summaries, completed by the candidate, of a teacher(s) teaching in the subject area for which the candidate is seeking to be certified and endorsed;

**(b)** provide an analysis of student achievement in each core academic subject in which the teacher seeks to demonstrate that the teacher is qualified by submitting evidence as follows:

**(i)** explain (350 word maximum) the way(s) in which a class of students demonstrated their achievement (e.g., test, work sample, performance) related to a segment of instruction; include examples of different materials used and student work;

**(ii)** provide the criteria (350 word maximum) for determining different levels of achievement and how this was communicated to the students; the criteria may be in a handout or other means of communication to students;

**(iii)** to illustrate relative levels of achievement in the class, provide examples of the work of three unidentified students who represent "high," "mid range," and "low" levels of achievement; these examples may include unidentified student written or drawn work, photographs, audio recordings (five minute maximum), or video recordings (five minute maximum and written parental consent to video child);

**(iv)** explain (350 word maximum) how the three unidentified students differed in their achievement levels and how this achievement relates to the state's standards and benchmarks;

**(v)** explain (350 word maximum) how this data could be taken into account in a subsequent instructional segment for the class;

**(c)** the local panel of teachers shall consist of two teachers:

**(i)** one teacher will be appointed by the

principal in the school where the teacher seeking to be certified and endorsed is teaching; the second teacher will be appointed by the candidate;

(ii) panelists must be certified and endorsed, as defined in Subsection B, C or D of 6.69.4.7 NMAC, hold a current level 2 or 3-A license, and have an endorsement or license in the subject area or areas to be evaluated;

(iii) panelists may be from the candidate's same school, or same district, or from another school or district in New Mexico;

(5) both teachers on the panel must agree that the candidate has met, or exceeds, the competencies and indicators for the level of licensure the teacher being evaluated holds or that the students of the teacher being evaluated have demonstrated growth and progress in each core academic subject the teacher teaches;

(6) the panel shall submit their recommendation to the local superintendent and records of the panel's findings shall be kept on file locally and available to the public upon request.

[6.69.4.9 NMAC - Rp, 6.69.4.9 NMAC, 1/18/2023]

#### **6.69.4.10 IMPLEMENTATION OF THE ANNUAL EDUCATOR EVALUATION SYSTEM:**

A. Each school district shall adopt policies, guidelines, and procedures for annual teacher performance evaluation. The annual evaluation plan will be combined with the evaluation plan for licensure advancement provided in Subsection A of 6.69.4.11 NMAC to form an overall system for teacher evaluation and support.

B. No later than 40 school days after the first day of school of each school year, each teacher and their school principal shall establish a professional development plan for the teacher, with measurable objectives, for the coming year based on, among other things:

(1) the department's teaching competencies and indicators for teachers; and

(2) the previous year's annual evaluation, if applicable; and

(3) assurance that the teacher is certified and endorsed in the core academic subject(s) the teacher teaches and that the school district has appropriately assigned the teacher to teach in the subject(s) in which the teacher is certified and endorsed.

C. Annual performance evaluations shall include how well the professional development plan was carried out and the measurable objectives were achieved.

D. The school principal shall observe each teacher's classroom or program practice at least once annually to determine the teacher's ability to demonstrate state adopted competencies and indicators for each teacher's licensure level.

E. If a level 2 or level 3-A teacher does not demonstrate essential competencies for a given school year, the school district shall provide the teacher with professional development and peer intervention, including mentoring, for a period the school principal deems necessary. If by the end of that school year the teacher still fails to demonstrate essential competencies, a governing authority may choose not to contract with that teacher.

F. If a level 3-A teacher does not demonstrate essential competencies at level 3-A for a given school year, the school district shall provide the teacher with professional development and peer intervention, including mentoring, for a period the school principal deems necessary. If by the end of the following school year the teacher still fails to demonstrate essential level 3-A competencies, the superintendent may recommend to the department that the teacher's level 3-A license be suspended until such time as the teacher demonstrates the essential competencies at level 3-A. Depending on the outcome of any due process proceeding under

the Uniform Licensing Act and if the superintendent verifies that the teacher meets the standards for a level 2 license, the teacher may be issued a level 2 license during the period of level 3-A licensure suspension. A suspended level 3-A license may be reinstated by the secretary of education upon verification by a local superintendent that the teacher now demonstrates the essential competencies at level 3-A or through the process described in 6.69.4.11 NMAC.

G. At least every two years, school principals shall attend a training program approved by the department to improve their teacher evaluation skills.

[6.69.4.10 NMAC – Rp, 6.69.4.10 NMAC, 1/18/2023]

#### **6.69.4.11 LICENSURE ADVANCEMENT:**

A. To advance from level 1 licensure to level 2 licensure, a teacher who:

(1) is in their first or second year of teaching during the 2022-2023 school year is eligible to participate in APLI-II;

(2) is in their third year of teaching during the 2022-2023 school year is eligible to participate in APLI-II or submit a professional development dossier (PDD) during the 2022-2023 or the 2023-2024 school year;

(3) is in their fourth year of teaching during the 2022-2023 school year:

(a) may participate in APLI-II, but shall be continuously enrolled in the required micro-credentials to complete APLI-II by the end of their fifth year of teaching;

(b) may submit a PDD during 2022-2023 school year or the 2023-2024 school year; or

(c) shall submit a PDD during the 2023-2024 if they fail to complete two or more micro-credentials by June 2023;

(4) is in their fifth year of teaching during the 2022-2023 school year shall submit a PDD.

(5) is in their first year of teaching during the 2023-2024 school year or thereafter shall participate in APLI-II.

**B.** To advance from level 2 licensure to level 3 licensure, during the:

(1) 2023-2024 school year, a teacher may participate in APLII-III or submit the PDD;

(2) 2024-2025 school year or thereafter, a teacher shall participate in APLII-III.

**C.** The PDD shall include:

(1) evidence of competence that may be collected over multiple school years, including the year the PDD is being developed;

(2) evidence in the following format that demonstrates how the teacher meets the department's nine teacher competencies and indicators for the level of licensure to which the teacher is advancing; evidence that demonstrates how the teacher meets competencies related to an:

(a) instruction strand (competencies 1, 2, 5); and a

(b) student learning strand (competencies 3, 4, 6, and 7); and a

(c) professional learning strand (competencies 8 and 9);

(3) evidence from an evaluation strand that includes the teacher's annual evaluations from at least the two years prior to the application for advancement and the superintendent's recommendation for advancement to the next licensure level;

(4) a verification strand that includes:

(a) for a level 1 teacher advancing to level 2:

(i) verification of participation in a school district's formal mentorship program;

(ii) verification of three years of successful teaching experience at level 1;

(iii) verification by the superintendent that the work product in the PDD is that of the teacher and that the data submitted is accurate;

(b) for a level 2 teacher advancing to level 3-A:

(i) verification of a post baccalaureate degree or national board professional teaching certification;

(ii) verification of a minimum three years of successful teaching experience at level 2;

(iii) verification by the superintendent that the work product in the PDD is that of the teacher and that the data submitted is accurate.

**D.** Evidence in the PDD competency strands:

(1) The instruction strand shall include evidence of:

(a) student achievement data;

(b) assessment techniques and procedures;

(c) instructional plans and materials;

(d) examples of student work and performance; and

(e) evidence of implementation of state curriculum standards.

(2) The student learning strand shall include mandatory evidence and may include evidence as follows:

(a) the student learning strand shall include evidence of:

(i) adaptations or modification for diverse learners;

(ii) evidence of effective classroom management strategies and procedures;

(iii) classroom observation reports; and

(iv) evidence of communication with students and parents.

(b) the student learning strand may include evidence in the form of student surveys or video tapes with reflections or analysis.

(3) The professional learning strand shall include evidence of at least one of the following:

(a) professional development activities associated with the teachers annual professional development plan (PDP);

(b) evidence of collaborating with professional community;

(c) parent surveys;

(d) research publications; or

(e) professional presentations.

(4) Evidence comparable and equivalent to Paragraphs (1), (2) and (3) of Subsection E of this section may be developed through certification by the national board of professional teaching standards.

**E.** Unless special accommodations are requested in writing to the department 30 days in advance of a submission, the PDD and associated fees in Subsection C of 6.60.7.8 NMAC shall be submitted electronically following procedures established by the department.

**F.** The PDD shall be evaluated by the superintendent of the teacher's school district and by two external reviewers, one of whom shall hold the same grade level licensure and subject area endorsement as the candidate, as follows:

(1) The superintendent will complete the verification and evaluation strands to make a recommendation for licensure advancement and the two external reviewers will rate the three competency strands as "exceeds standards," "meets standards" or "does not meet standards in order to make their recommendations for licensure advancement."

(2) Each one of the three competency strands of a teacher's PDD reviewed by

the independent reviewers must be rated as either “exceeds standards” or “meets standards” and each one of the strands completed by the superintendent must be verified and have a positive recommendation for the teacher to advance to the next higher level of licensure.

(3) The superintendent and the reviewers will submit the PDD to the department or its contractor with their ratings.

(4) The department will evaluate the ratings of the superintendent and the external reviewers and approve or deny the teacher’s application for licensure advancement:

(a) If one of the external reviewers rates one of the competency strands of the PDD as “exceeds standards” and the other external reviewer rates the same strand as “meets standards,” the strand will be deemed passed.

(b) If one of the external reviewers rates one of the competency strands of the PDD as “does not meet standards” and the other rates the same strand as “exceeds standards,” the finding will be that the candidate “meets standards” and the strand will be deemed passed.

(c) If one of the external reviewers rates one of the competency strands of the PDD as “does not meet standards” and the other rates the same strand as “meets standards,” a third reviewer will resolve the discrepancy in order to determine if the strand will be passed.

(d) If both of the external reviewers rate the competency strand(s) of PDD the same, that rating will be their finding. If, however, both of the external reviewers rate the competency strand(s) of the PDD as “does not meet standards,” a third trainer or reviewer may review the strand(s) to confirm or reject their ratings.

G. A candidate for licensure advancement who is not successful in the PDD may continue to submit a new PDD.

H. If a candidate for licensure advancement meets or exceeds standards in one or some of the strands, but not in all of them, the teacher’s score(s) of “meets standards” or “exceeds standards” may be retained for a period of two calendar years. Any resubmission of a PDD during that two-year period need only address those strands rated “does not meet standards” to determine a final passing score for all strands for licensure advancement.

[6.69.4.11 NMAC – Rp, 6.69.4.11 NMAC, 1/18/2023]

#### **6.69.4.12 TEACHER COMPETENCIES AND INDICATORS FOR LICENSURE LEVELS 1, 2, AND 3-A:**

A. The department-approved educator evaluation system shall include the following standards and indicators as part of the evaluation criteria for teachers.

(1) The teacher demonstrates knowledge of planning and preparation by:

(a) demonstrating knowledge of content. The teacher knows the subject matter well, has a good grasp of child development and how students learn, and designs effective and rigorous standards-based units of instruction consisting of well-structured lessons with measurable outcomes for all students;

(b) demonstrating knowledge of students. The teacher has a good grasp of child development and how students learn, and designs effective and rigorous standards-based units of instruction consisting of well-structured lessons with measurable outcomes for all students;

(c) setting instructional outcomes and designing student assessment. The teacher analyzes data from assessments, draws conclusions, and shares them appropriately;

(d) demonstrating knowledge of resources. The teacher utilizes skills and content learned from professional development opportunities and

ensures all students have access to resources to support their learning; and

(e) designing coherent instruction. The teacher develops meaningful sequenced lessons and activities that are also differentiated to support the learning of all students.

(2) The teacher demonstrates knowledge of creating an environment for learning by:

(a) creating an environment of respect and rapport. An essential skill of teaching is that of managing relationships with students and ensuring that relationships among students are positive and supportive. Teachers create an environment of respect and rapport in their classrooms by the ways they interact with students and by the interactions they encourage and cultivate among students. An important aspect of respect and rapport relates to how the teacher responds to students and how students are permitted to treat one another;

(b) creating a safe learning environment with routines and procedures. Creates and maintains a safe and collaborative learning environment that motivates all students to take academic risks, challenge themselves, and claim ownership of their learning. Access is provided to learning materials and resources;

(c) establishing a culture for learning. Uses instructional practices that reflect high expectations regarding content and quality of effort and work; engage all students; and are personalized to accommodate diverse learning styles, needs, interests, and levels of readiness; and

(d) managing student behavior. The teacher utilizes a skill-building approach that strengthens the foundation of social skills for all students. Teaches behavioral expectations and acknowledges students for following them.



(3) The teacher demonstrates knowledge of teaching for learning by:

(a) communicating with students in a manner that is appropriate to their culture, language, and level of development. The teacher uses systems that evoke responses from all students and are appropriate to students' developmental, cognitive, and academic language proficiency. The teacher consistently engages students in high levels of thinking within instruction and content;

(b) using questioning and discussion techniques to support classroom discourse. Teacher models and utilizes questioning techniques that allow all students to engage and participate in classroom discussions;

(c) engaging students in learning. Effective teachers understand engaging students in learning is vital in order for students to acquire knowledge. Student engagement does not happen by accident, it is the result of careful planning and implementation;

(d) assessing through instruction, through formative and summative assessments. The teacher monitors student learning and provides feedback to support student growth; and

(e) demonstrating flexibility and responsiveness. The teacher demonstrates the ability to make both minor and major adjustments to the lesson in order to maintain maximum student engagement and/or help students when they encounter difficulty in their learning.

(4) The teacher demonstrates professionalism by:

(a) communicating with families. Teachers establish relationships with families by communicating with them about the instructional program, conferring with them about their individual student(s), and inviting them to be part of the educational

process itself on a regular basis throughout the academic school year;

(b) participating in professional learning community. Teachers collaborate with their colleagues in order to share strategies, plan joint efforts, and plan for the success of individual students;

(c) reflecting on teaching. Demonstrates the capacity to reflect on and improve the educator's own practice, using informal means as well as meetings with teams and workgroups to gather information, analyze data, examine issues, set meaningful goals and develop new approaches in order to improve teaching and learning;

(d) demonstrating professionalism. The teacher demonstrates professionalism by acting with integrity and honesty. The teacher is ethical and reliable and meets routine responsibilities consistently while putting student needs at the forefront of their decision-making; and

(e) growing and developing professionally. Actively pursues professional development and learning opportunities to improve the quality of practice and build the expertise and experience to assume different instructional and leadership roles.

**B.** A school district may select or develop additional standards and indicators determined appropriate by the local school district to complete the local teacher performance evaluation system.

**C.** Each school district shall provide training in evaluation of performance, classroom observation techniques, conference skills, and growth planning to all teachers and personnel assigned performance evaluation duties.

**D.** Teachers whose leadership roles are primarily outside of the classroom will be evaluated on their ability to lead other teachers in meeting the competencies and indicators in their level of licensure. [6.69.4.12 NMAC - Rp, 6.69.4.12 NMAC, 1/18/2023]

#### **HISTORY OF 6.69.4 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: SBE Regulation No. 89-6, Performance Evaluation Requirements for Teachers, Administrators, Library Media Specialists, and Counselors, filed August 17, 1989; SBE Regulation No. 93-21, Performance Evaluation Requirements for Teachers, Administrators, Library Media Specialists, and Counselors, filed November 16, 1993.

#### **NMAC History:**

6.69.3 NMAC, Performance Evaluation Requirements for Teachers, Administrators, Library Media Specialists, and Counselors, filed 6/1/2003.

6.69.4 NMAC Performance Evaluation System Requirements for Teachers, replaces 6.69.3 NMAC, Section 8, filed 9/30/2003.

#### **History of Repealed Material:**

6.69.4 NMAC, Performance Evaluation System Requirements for Teachers, filed 9/30/2003, was repealed and replaced by 6.69.4 NMAC, Performance Evaluation System Requirements for Teachers, effective 1/18/2023.

### **PUBLIC EDUCATION DEPARTMENT**

#### **TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 69 SCHOOL PERSONNEL - PERFORMANCE PART 5 PERFORMANCE EVALUATION SYSTEM REQUIREMENTS FOR LIBRARIAN-TEACHERS**

**6.69.5.1 ISSUING  
AGENCY:** Public Education  
Department, hereinafter the  
department.  
[6.69.5.1 NMAC – Rp, 6.69.5.1  
NMAC, 1/18/2023]

**6.69.5.2 SCOPE:**

Performance evaluation system requirements for librarian-teachers. [6.69.5.2 NMAC - Rp, 6.69.5.2 NMAC, 1/18/2023]

**6.69.5.3 STATUTORY**

**AUTHORITY:** Sections 9-24-8, 22-2-1, 22-2-2, and 22-10A-3 NMSA 1978.

[6.69.5.3 NMAC- Rp, 6.69.5.3 NMAC, 1/18/2023]

**6.69.5.4 DURATION:**

Permanent.

[6.69.5.4 NMAC - Rp, 6.69.5.4 NMAC, 1/18/2023]

**6.69.5.5 EFFECTIVE**

**DATE:** January 18, 2023, unless a later date is specified at the end of a section.

[6.69.5.5 NMAC - Rp, 6.69.5.5 NMAC, 1/18/2023]

**6.69.5.6 OBJECTIVE:**

This rule establishes the requirements for a department-approved evaluation system for librarian-teachers from kindergarten through grade 12. This rule identifies the specific evaluation standards, indicators, and requirements for a competency-based evaluation system for librarian-teachers.

[6.69.5.6 NMAC - Rp, 6.69.5.6 NMAC, 1/18/2023]

**6.69.5.7 DEFINITIONS:**

**A. “Advancement program level I – level II”** or “**APLI-II**” means a series of five micro-credentials, aligned with the department-approved educator evaluation system, that a teacher with a level 1 license shall successfully complete and demonstrate mastery in before progressing to a level 2 license.

**B. “Advancement program level II – level III”** or “**APLII-III**” means a series of five micro-credentials, aligned with the department-approved educator evaluation system, that a teacher with a level 2 teaching license shall successfully complete and demonstrate mastery in before progressing to a level 3-A teaching license.

**C. “Governing authority”** means the policy-setting body of a school district, charter school, constitutional special school, regional education cooperative, or final decisionmaker of another state agency.

**D. “Librarian-teacher”** means a licensed teacher with a library media endorsement performing work in a public school that requires that endorsement.

**E. “Micro-credential”** means a competency-based process made up of several courses, each focused on a discrete skill or area aligned with the educator evaluation system.

[6.69.5.7 NMAC - Rp, 6.69.5.7 NMAC, 1/18/2023]

**6.69.5.8 REQUIREMENTS:**

**A.** Every public school librarian-teacher shall have an annual performance evaluation based on an professional development plan that meets the requirements of the department-approved evaluation system.

**B.** To advance from licensure level 1 to level 2 and from licensure level 2 to level 3-A, a librarian-teacher who applies for licensure shall meet the requirements of the department-approved evaluation system.

[6.69.5.8 NMAC - Rp, 6.69.5.8 NMAC, 1/18/2023]

**6.69.5.9 IMPLEMENTATION OF – ANNUAL EDUCATOR EVALUATION SYSTEM:**

**A.** Each governing authority that employs librarian-teachers shall adopt policies, guidelines, and procedures for annual librarian-teacher performance evaluation that meet the requirements of this rule. The annual evaluation plan will be combined with the evaluation plan for licensure advancement provided in Subsection A of 6.69.5.10 NMAC to form an overall system for librarian-teacher evaluation and support.

**B.** No later than 40 school days after the first of school of each school year, each librarian-

teacher and their school principal shall establish a professional development plan for the librarian-teacher, with measurable objectives, for the coming year based on, among other things:

(1) the department’s 11 librarian-teacher competencies and indicators for the librarian-teacher’s licensure level; and  
(2) the previous year’s annual evaluation, if applicable.

**C.** Annual performance evaluations shall be based on, among other things, how well the professional development plan was carried out and the measurable objectives were achieved.

**D.** The school principal shall observe each librarian-teacher’s program practice at least once annually to determine the librarian-teacher’s ability to demonstrate state adopted competencies and indicators for each librarian-teacher’s licensure level.

**E.** If a level 2 or level 3-A librarian-teacher does not demonstrate essential competencies for a given school year, the school district shall provide the librarian-teacher with professional development and peer intervention, including mentoring, for a period the school principal deems necessary. If by the end of that school year the librarian-teacher still fails to demonstrate essential competencies, a district may choose not to contract with that librarian-teacher.

**F.** If a level 3-A librarian-teacher does not demonstrate essential competencies at level 3-A for a given school year, the school district shall provide the librarian-teacher with professional development and peer intervention, including mentoring, for a period the school principal deems necessary. If by the end of the following school year the librarian-teacher still fails to demonstrate essential level 3-A competencies, the superintendent may recommend to the secretary of education that the librarian-teacher’s level 3-A license be suspended until such time as the

librarian-teacher demonstrates the essential competencies at level 3-A. Depending on the outcome of any due process proceeding under the Uniform Licensing Act and if the superintendent verifies that the librarian-teacher meets the standards for a level 2 license, the librarian-teacher may be issued a level 2 license during the period of level 3-A licensure suspension. A suspended level 3-A license may be reinstated by the department upon verification by a local superintendent that the librarian-teacher now demonstrates the essential competencies at level 3-A or through the process described in 6.69.5.10 NMAC.

[6.69.5.9 NMAC - Rp, 6.69.5.9 NMAC, 1/18/2023]

#### **6.69.5.10 LICENSURE ADVANCEMENT:**

**A.** To advance from level 1 licensure to level 2 licensure, a librarian-teacher who:

(1) is in their first or second year of teaching during the 2022-2023 school year is eligible to participate in APLI-II;

(2) is in their third year of teaching during the 2022-2023 school year is eligible to participate in APLI-II or submit a professional development dossier (PDD) during the 2022-2023 or the 2023-2024 school year;

(3) is in their fourth year of teaching during the 2022-2023 school year:

(a) may participate in APLI-II, but shall be continuously enrolled in the required micro-credentials to complete APLI-II by the end of their fifth year of teaching;

(b) may submit a PDD during 2022-2023 school year or the 2023-2024 school year; or

(c) shall submit a PDD during the 2023-2024 if they fail to complete two or more micro-credentials by June 2023;

(4) is in their fifth year of teaching during the 2022-2023 school year shall submit a PDD.

(5) is in their first year of teaching during the 2023-2024 school year or thereafter shall participate in APLI-II.

**B.** To advance from level 2 licensure to level 3 licensure, a teacher who:

(1) is in their first or second year of teaching during the 2022-2023 school year is eligible to participate in APLI-II;

(2) is in their third year of teaching during the 2022-2023 school year is eligible to participate in APLI-II or submit a professional development dossier (PDD) during the 2022-2023 or the 2023-2024 school year;

(3) is in their fourth year of teaching during the 2022-2023 school year:

(a) may participate in APLI-II, but shall be continuously enrolled in the required micro-credentials to complete APLI-II by the end of their fifth year of teaching;

(b) may submit a PDD during 2022-2023 school year or the 2023-2024 school year; or

(c) shall submit a PDD during the 2023-2024 if they fail to complete two or more micro-credentials by June 2023;

(4) is in their fifth year of teaching during the 2022-2023 school year shall submit a PDD.

(5) is in their first year of teaching during the 2023-2024 school year or thereafter shall participate in APLI-II.

**C.** The PDD shall include:

(1) evidence of competence that may be collected over multiple school years, including the year the PDD is being developed;

(2) evidence in the following format that demonstrates how the librarian-teacher meets the department's eleven librarian-teacher competencies and indicators for the level of licensure to which the librarian-teacher is advancing; evidence that demonstrates how the librarian-teacher meets competencies related to a:

(a) teaching and learning strand (competencies 1-6); and a

(b) program development and management/information access and delivery strand (competencies 7-9); and a

(c) professional learning strand (competencies 10 and 11).

(3) evidence from an evaluation strand that includes the librarian-teacher's annual evaluations from at least the two years prior to the application for advancement and the superintendent's recommendation for advancement to the next licensure level;

(4) a verification strand that includes:

(a) for a level 1 librarian-teacher advancing to level 2:

(i) verification of participation in a school district's formal mentorship program;

(ii) verification of three years of successful librarian-teaching experience at level I;

(iii) verification by the superintendent that the work product in the PDD is that of the librarian-teacher and that the data submitted is accurate.

(b) for a level 2 teacher advancing to level 3-A:

(i) verification of a post baccalaureate degree or national board professional teaching certification;

(ii) verification of a minimum three years of successful librarian-teaching experience at level 2;

(iii) verification by the superintendent that the work product in the PDD is that of the librarian-teacher and that the data submitted is accurate;

**D.** Evidence in the PDD competency strands:

(1) The teaching and learning strand shall include evidence of:

<p>(a) student achievement data;</p> <p>(b) assessment techniques and procedures;</p> <p>(c) instructional plans and materials;</p> <p>(d) examples of student work and performance; and</p> <p>(e) evidence of implementation of state curriculum standards;</p> <p>(2) The program development and management or information access and delivery strand shall include mandatory evidence and may include evidence as follows:</p> <p>(a) the student learning strand shall include evidence of:</p> <p>(i) adaptations or modification for diverse learners;</p> <p>(ii) evidence of effective classroom management strategies and procedures;</p> <p>(iii) classroom observation reports; and</p> <p>(iv) evidence of communication with students and parents.</p> <p>(b) the student learning strand may include evidence in the form of student surveys or video tapes with reflections or analysis.</p> <p>(3) The professional learning strand shall include evidence of at least one of the following:</p> <p>(a) professional development activities associated with the teachers annual professional development plan (PDP);</p> <p>(b) evidence of collaborating with professional community;</p> <p>(c) parent surveys;</p> <p>(d) research publications; or</p> <p>(e) professional presentations.</p> <p>(4) Evidence comparable and equivalent to</p>	<p>Paragraphs (1), (2) and (3) of Subsection E of this section may be developed through certification by the national board of professional teaching standards.</p> <p><b>E.</b> Unless special accommodations are requested in writing to the department 30 days in advance of a submission, the PDD and associated fees in Subsection C of 6.60.7.8 NMAC shall be submitted electronically following procedures established by the department.</p> <p><b>F.</b> The PDD shall be evaluated by the superintendent of the teacher's school district and by two external reviewers, one of whom shall hold a library/media endorsement, as follows:</p> <p>(1) The superintendent will complete the verification and evaluation strands in order to make his recommendation for licensure advancement and the two external reviewers will rate the three competency strands as "exceeds standards," "meets standards" or "does not meet standards to make their recommendations for licensure advancement."</p> <p>(2) Each one of the three competency strands of a librarian-teacher's PDD reviewed by the independent reviewers must be rated as either "exceeds standards" or "meets standards" and each one of the strands completed by the superintendent must be verified and have a positive recommendation for the librarian-teacher to advance to the next higher level of licensure.</p> <p>(3) The superintendent and the reviewers will submit the PDD to the department or its contractor with their ratings.</p> <p>(4) The department will evaluate the ratings of the superintendent and the external reviewers and approve or deny the teacher's application for licensure advancement.</p> <p>(a) If one of the external reviewers rates one of the competency strands of the PDD as "exceeds standards" and the other external reviewer rates the same strand as "meets standards", the strand will be deemed passed.</p>	<p>(b) If one of the external reviewers rates one of the competency strands of the PDD as "does not meet standards" and the other rates the same strand as "exceeds standards", the finding will be that the candidate "meets standards" and the strand will be deemed passed.</p> <p>(c) If one of the external reviewers rates one of the competency strands of the PDD as "does not meet standards" and the other rates the same strand as "meets standards," a third reviewer will resolve the discrepancy in order to determine if the strand will be passed.</p> <p>(d) If both of the external reviewers rate the competency strand(s) of PDD the same, that rating will be their finding. If, however, both of the external reviewers rate the competency strand(s) of the PDD as "does not meet standards," a third trainer or reviewer may review the strand(s) to confirm or reject their ratings.</p> <p><b>G.</b> A candidate for licensure advancement who is not successful in the PDD may continue to submit a new PDD.</p> <p><b>H.</b> If a candidate for licensure advancement meets or exceeds standards in one or some of the strands, but not in all of them, the librarian-teacher's score(s) of "meets standards" or "exceeds standards" may be retained for a period of two calendar years. Any resubmission of a PDD during that two-year period need only address those strands rated "does not meet standards" to determine a final passing score for all strands for licensure advancement. [6.69.5.10 NMAC - Rp, 6.69.5.10 NMAC, 1/18/2023]</p> <p><b>6.69.5.11 NEW MEXICO LIBRARIAN-TEACHER COMPETENCIES AND INDICATORS FOR LICENSURE LEVELS 1, 2, 3:</b></p> <p><b>A.</b> New Mexico is one of the most diverse states in the nation, and this diversity is reflected in the strengths and needs of New Mexico's students. The ability of a</p>
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highly qualified librarian-teacher to address the learning needs of all of New Mexico's students, including those who learn differently because of disability, culture, language, or socioeconomic status, forms the framework for the New Mexico librarian-teacher competencies for licensure levels I, II, and III assessment criteria indicators.

**B.** The high objective statewide standard of evaluation for librarian-teachers shall include the following standards and indicators as part of the evaluation criteria for level I librarian-teachers.

(1) The librarian-teacher demonstrates knowledge of the library content area and established curriculum by:

(a) utilizing and enhancing established library curriculum;

(b) giving clear explanations relating to lesson content and procedure;

(c) communicating accurately in the library content area; and

(d) articulating to students the interrelatedness of content areas.

(2) The librarian-teacher appropriately utilizes a variety of teaching methods by:

(a) providing opportunities for students to work independently, in small groups and in large groups;

(b) using a variety of teaching methods, such as demonstrations, lecture, student-initiated work, group work, questioning, and independent practice;

(c) using a variety of resources, such as print and non-print materials, manipulatives, on-line resources, and technology;

(d) providing opportunities for students to apply, practice, and demonstrate knowledge and skills; and

(e) implementing necessary modifications and adaptations in instruction and library curriculum so that students

with disabilities have access in the least restrictive environment.

(3) The librarian-teacher communicates with and obtains feedback from students in a manner that enhances student learning and understanding by:

(a) explaining or demonstrating the relevance of topics and activities;

(b) communicating to students the instructional intent, directions or plan;

(c) establishing and stating expectations for student performance; and

(d) clarifying actions, directions, and explanations when students do not understand.

(4) The librarian-teacher effectively utilizes student assessment techniques and procedures by:

(a) soliciting communication from students about their learning;

(b) using a variety of strategies in instructional planning using ongoing assessment; and

(c) documenting observations of student learning using tools, such as anecdotal records, consultations with teachers or logs.

(5) The librarian-teacher comprehends the principles of student growth, development and learning, and applies them appropriately by:

(a) instructing students in the use of cognitive thinking skills, such as critical thinking, problem-solving, divergent thinking, inquiry, and decision-making;

(b) using teaching techniques that address student learning levels, rates, styles, and special needs, as well as diverse interests and backgrounds; and

(c) using materials and media that address student learning levels, rates, styles, and special needs, as well as diverse interests and backgrounds.

(6) The librarian-teacher recognizes student diversity and creates an atmosphere conducive to the promotion of positive student involvement and self-concept by:

(a) demonstrating sensitivity and responsiveness to the personal ideas, learning needs, interests, and feelings of students with disabilities, and from culturally and linguistically diverse backgrounds, including Native Americans, Hispanic Americans, African Americans, Asian Americans, and other recent immigrant groups;

(b) understanding how students differ in their approaches to learning and adjusts instruction to meet diverse needs;

(c) providing opportunities for each student to succeed;

(d) providing students with opportunities that promote creativity as well as critical and divergent thinking;

(e) providing opportunities for students to be responsible for their own behavior and learning;

(f) promoting positive student/teacher relationships; and

(g) encouraging high expectations for all students.

(7) The librarian-teacher models and promotes collaborative planning by:

(a) participating in informal collaborative curriculum planning with the teaching staff;

(b) collaborating with teaching staff to identify student information needs; and

(c) identifying potential areas of collaborative opportunities to design authentic learning tasks and informal assessments.

(8) The librarian-teacher organizes and manages the library in accordance with established written policies and procedures by:

(a) organizing the library to meet patron needs;	strategies in education and librarianship to improve the quality of learning; and	of resources such as print and non-print materials, manipulatives, on-line resources, and technology;
(b) selecting resources that support instructional priorities as well as recreational and informational needs of the patrons;	(b) participating in instructional improvement and school reform initiatives.	(d) demonstrating understanding and appropriate application of learning styles, modalities, and intelligence theories; and
(c) applying collection development techniques including needs analysis, evaluation, selection, and deselection of resources.	(11) The librarian-teacher works productively with colleagues, parents, and community members by:	(e) designing and implementing necessary modifications and adaptations in instruction and library curriculum so that students with disabilities have access in the least restrictive environment.
(d) assessing collection annually based on currency, size, and balance;	(a) actively promoting collegial relations with other school personnel;	(3) The librarian-teacher communicates with and obtains feedback from students in a manner that enhances student learning and understanding by:
(e) maintaining inventory of library resources;	(b) inviting parents and community to the library;	(a) explaining, demonstrating, or communicating the relevance of topics and activities;
(f) evaluating and adjusting library program and services;	(c) communicating in a professional manner with colleagues, parents, and community members.	(b) consistently communicating to students the instructional intent, directions, or plan;
(g) promoting effective use of the library and its services.	C. The high objective standard of evaluation shall include the following standards and indicators as part of the evaluation criteria for level II librarian-teachers.	(c) establishing and stating expectations for student performance;
(9) The librarian-teacher manages the educational setting in a manner that promotes positive student behavior, and a safe and healthy environment:	(1) The librarian-teacher demonstrates knowledge of the library content area and established curriculum.	(d) presenting directions and explanations in a variety of ways to ensure student understanding.
(a) serving as a model for constructive behavior patterns;	(a) enhancing and extending established library curriculum;	(4) The librarian-teacher effectively utilizes student assessment techniques and procedures by:
(b) establishing and stating expectations for student behavior in the library;	(b) giving clear explanations relating to lesson content and procedure;	(a) communicating with students about their learning;
(c) making transitions in instruction effectively;	(c) communicating accurately in the library content area; and	(b) selecting appropriate strategies for specific learning outcomes and adjusts instruction using ongoing assessment; and
(d) preparing and arranging instructional material in advance for easy student accessibility;	(d) demonstrating the interrelatedness of content areas.	(c) documenting observations of student learning using tools, such as anecdotal records, consultations with teachers or logs.
(e) implementing a classroom management system that promotes acceptable and appropriate student behavior; and	(2) The librarian-teacher appropriately utilizes a variety of teaching methods by:	(5) The librarian-teacher comprehends the principles of student growth, development, and learning, and applies them appropriately by:
(f) identifying hazards, assessing risks, and taking appropriate action.	(a) designing appropriate opportunities for students to work independently, in small groups and in large groups;	
(10) The librarian-teacher demonstrates a willingness to examine and implement change, as appropriate, by:	(b) selecting from a variety of teaching methods such as demonstrations, lecture, student-initiated work, group work, questioning, and independent practice for specific instructional goals and purposes;	
(a) seeking professional development opportunities to identify relevant	(c) integrating into instruction a variety	

<p>(a) integrating into instruction cognitive thinking skills such as critical thinking, problem-solving, divergent thinking, inquiry, and decision-making;</p> <p>(b) adapting teaching techniques that address student learning levels, rates, styles and special needs, as well as diverse interests and backgrounds;</p> <p>(c) adapting materials and media that address student learning levels, rates, styles and special needs, as well as diverse interests and backgrounds.</p> <p>(6) The librarian-teacher recognizes student diversity and creates an atmosphere conducive to the promotion of positive student involvement and self-concept by:</p> <p>(a) acknowledging and validating the ideas, learning needs, interests, and feelings of students with disabilities, and from culturally and linguistically diverse backgrounds, including Native Americans, Hispanic Americans, African Americans, Asian Americans, and other recent immigrant groups;</p> <p>(b) demonstrating an awareness of the influences of context, disability, language and culture on students learning;</p> <p>(c) designing opportunities for each student to succeed based on individual learning needs;</p> <p>(d) designing learning experiences that promote creativity as well as critical and divergent thinking;</p> <p>(e) designing opportunities that require and reinforce student responsibility for their own behavior and learning;</p> <p>(f) developing students' self-esteem, motivation, character, and sense of civic responsibility; and</p> <p>(g) establishing and communicating high expectations for all students.</p> <p>(7) The librarian-teacher models and promotes collaborative planning:</p>	<p>(a) participating in informal or formal collaborative curriculum planning with teaching staff;</p> <p>(b) collaborating with teaching staff to identify student information needs; and</p> <p>(c) promoting collaborative opportunities to design authentic learning tasks and informal assessments.</p> <p>(8) The librarian-teacher organizes and manages the library in accordance with established written policies and procedures by:</p> <p>(a) adjusting the organization of the library according to observation of patron needs;</p> <p>(b) soliciting patron input to select resources that support instructional priorities as well as recreational and informational needs of patrons;</p> <p>(c) applying collection development techniques including needs analysis, evaluation, selection, and deselection of resources;</p> <p>(d) assessing the collection annually based on currency, size, and balance and develops a collection development plan;</p> <p>(e) conducting regular periodic inventories and analyzing inventory reports;</p> <p>(f) seeking input from learning community on perceived needs for library improvement and adjusts library program and services accordingly; and</p> <p>(g) developing library awareness through promotional materials.</p> <p>(9) The librarian-teacher manages the educational setting in a manner that promotes positive student behavior, and a safe and healthy environment by:</p> <p>(a) identifying, explaining, and modeling constructive behavior patterns;</p>	<p>(b) establishing and reinforcing expectations for student behavior in the library;</p> <p>(c) making transitions in instruction effectively;</p> <p>(d) preparing and arranging instructional material in advance for easy student accessibility;</p> <p>(e) implementing a classroom management system that promotes acceptable and appropriate student behavior; and</p> <p>(f) identifying hazards, assessing risks, and taking appropriate action.</p> <p>(10) The librarian-teacher demonstrates a willingness to examine and implement change, as appropriate by:</p> <p>(a) using professional development opportunities to identify relevant strategies in education and librarianship to improve the quality of learning; and</p> <p>(b) contributing to instructional improvement and school reform initiatives.</p> <p>(11) The librarian-teacher works productivity with colleagues, parents, and community members by:</p> <p>(a) collaborating with colleagues;</p> <p>(b) promoting active roles for parents and community members in the library;</p> <p>(c) providing a system for interactive communication in a professional manner with colleagues, parents, and community members.</p> <p>D. The department-approved educator evaluation system shall include the following standards and indicators as part of the evaluation criteria for level 3 librarian-teachers.</p> <p>(1) The librarian-teacher demonstrates knowledge of the library content area and established curriculum by:</p>
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<p>(a) contributing to the refinement and development of the library curriculum;</p> <p>(b) providing clear explanations relating to lesson content and procedures in multiple ways and is aware of knowledge and preconceptions that students can bring to the subject;</p> <p>(c) communicating accurately in the library content area and creating multiple paths to the subject matter; and</p> <p>(d) integrating other content areas and the library curriculum.</p> <p>(2) The librarian-teacher appropriately utilizes a variety of teaching methods by:</p> <p>(a) engaging students in activities designed for small groups, large groups, and independent work;</p> <p>(b) demonstrating effective selection and using of a variety of teaching methods to make information accessible to all students;</p> <p>(c) demonstrating effective integration of a variety of resources into instruction, such as print and non-print materials, manipulatives, on-line resources, and technology;</p> <p>(d) designing opportunities for students to apply, practice, and demonstrate knowledge and skills based on learning modalities, style preferences, and intelligences; and</p> <p>(e) engaging with colleagues to implement necessary modifications and adaptations in instruction and library curriculum so that students with disabilities have access in the least restrictive environment.</p> <p>(3) The librarian-teacher communicates with and obtains feedback from students in a manner that enhances student learning and understanding by:</p> <p>(a) engaging students in explaining or demonstrating the relevance of topics and activities;</p>	<p>(b) engaging students in instructional directions and plans using techniques such as query, survey, or instructional choice;</p> <p>(c) establishing and stating expectations for student performance; and</p> <p>(d) presenting directions and explanations in a variety of ways to ensure student understanding.</p> <p>(4) The librarian-teacher effectively utilizes student assessment techniques and procedures by:</p> <p>(a) involving students in the analysis and evaluation of their learning;</p> <p>(b) designing appropriate strategies for specific learning outcomes and adjusts instruction using ongoing assessment;</p> <p>(c) documenting observations of student learning using tools, such as anecdotal records, consultations with teachers and logs.</p> <p>(5) The librarian-teacher comprehends the principles of student growth, development, and learning, and applies them appropriately by:</p> <p>(a) consistently integrating into instruction cognitive thinking skills such as critical thinking, problem-solving, divergent thinking, inquiry, and decision-making;</p> <p>(b) integrating into instruction the most effective techniques that address student learning levels, rates, styles and special needs, as well as diverse interests and backgrounds;</p> <p>(c) integrating into instruction materials and media that address student learning levels, rates, styles and special needs, as well as diverse interests and backgrounds.</p> <p>(6) The librarian-teacher recognizes student diversity and creates an atmosphere conducive to the promotion of positive student involvement and self-concept by:</p>	<p>(a) acknowledging and integrating the ideas, learning needs, interests, and feelings of students with disabilities, and from culturally and linguistically diverse backgrounds, including Native Americans, Hispanic Americans, African Americans, Asian Americans, and other recent immigrant groups;</p> <p>(b) creating an environment that encourages the awareness of the influences of context, disability, language, and culture on student learning;</p> <p>(c) providing accommodations and interventions that allow each student to succeed based on individual learning needs;</p> <p>(d) engaging students in learning experiences that promote creativity as well as critical and divergent thinking;</p> <p>(e) designing opportunities that require and reinforce student responsibility for their behavior and learning;</p> <p>(f) fostering the development of respect for individual, cultural, linguistic, ability, and religious differences; and</p> <p>(g) assisting students in setting high standards for their performance.</p> <p>(7) The librarian-teacher models and promotes collaborative planning by:</p> <p>(a) participating in formal collaborative curriculum planning with the teaching staff;</p> <p>(b) collaborating with the teaching staff to identify student information needs; and</p> <p>(c) collaborating in designing authentic learning tasks and informal assessments.</p> <p>(8) The librarian-teacher organizes and manages the library in accordance with established written policies and procedures by:</p> <p>(a) planning for long-range improvements of library organization based on</p>
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evaluation of patron needs, using indicators such as usage patterns, traffic flow and circulation;

(b)

forming and leading library advisory committee to assist in the selection of resources that support instructional priorities as well as recreational and informational needs of patrons;

(c)

applying collection development techniques, including needs analysis, evaluation, selection and deselection of resources;

(d)

assessing the collection annually based on currency, size, and balance and develops a long-range collection development plan;

(e)

using analysis of inventory reports as a component of collection development;

(f)

responding effectively to learning community needs for library program and services; and

(g)

analyzing and revising promotional materials for effectiveness and currency.

(9) The

librarian-teacher manages the educational setting in a manner that promotes positive student behavior, and a safe and healthy environment by:

(a)

integrating the teaching of constructive, pro-social behaviors into regular instruction;

(b)

engaging students in establishing expectations for building a learning community in the library;

(c)

making transitions in instruction effectively;

(d)

preparing and arranging instructional material in advance for easy student accessibility;

(e)

implementing a classroom management system that promotes acceptable and appropriate student behavior; and

(f)

identifying hazards, assessing risks, and taking appropriate action.

(10) The

librarian-teacher demonstrates a willingness to examine and implement change, as appropriate, by:

(a)

contributing to the professional community by sharing relevant strategies in education and librarianship; and

(b)

assuming a leadership role in the study and implementation of instructional improvement and school reform initiatives.

(11) The

librarian-teacher works productivity with colleagues, parents, and community members by:

(a)

serving as a role model for collaborative working relations across the profession;

(b)

promoting active roles for parents and community members in the library; and

(c)

providing a system for interactive communication in a professional manner with colleagues, parents, and community members.

**E.** A school district may select or develop additional standards and indicators determined appropriate by the local school district to complete the local librarian-teacher performance evaluation system.

**F.** Each school district shall provide training in evaluation of performance, program observation techniques, conference skills, and growth planning to all librarian-teacher and personnel assigned performance evaluation duties.

**G.** A librarian-teacher whose leadership roles are primarily outside of the library will be evaluated on their ability to lead other librarian-teachers in meeting the competencies and indicators in their level of licensure.

[6.69.5.11 NMAC - Rp, 6.69.5.11 NMAC, 1/18/2023]

**HISTORY OF 6.69.5 NMAC:**

## **HISTORY OF REPEALED MATERIAL:**

6.69.3.10 NMAC, Evaluation of Library/Media Specialist Performance, Filed 6/01/2001 - Repealed 10/17/2005

6.69.5 NMAC, Performance Evaluation System Requirements For Librarian-Teachers, filed 10/17/2005 was repealed and replaced by 6.69.5 NMAC, Performance Evaluation System Requirements For Librarian-Teachers, effective 1/18/2023.

## **PUBLIC EDUCATION DEPARTMENT**

**This is an amendment to 6.31.2 NMAC, Sections 7, 10, 11, and 13, effective 07/01/2023.**

### **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 niños fund”** means a risk pool fund in New Mexico to support highcost 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] Subsection E 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; A, 7/1/2023]

**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]~~ the multi-layered system of supports 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. This support shall be provided regardless of whether a student has been referred for a full and individual evaluation for special education and related services or has been identified as eligible for special education.

(1) A student's

participation in the multi-layered system of supports does not prevent the full and individual evaluation for special education of the student.

(2) A student

may receive a full and individual evaluation for special education and related services at any time before, during, or after the implementation of the multi-layered system of supports. A parent may request a full and individual evaluation or special education and related services at any time.

(3) If the

student is suspected of having a disability and demonstrates an obvious need for special education or related services by reason thereof, then the student shall be referred for a full and individual evaluation for special education without undue delay.

~~[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] C. 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.] Each public agency shall follow evaluation procedures in compliance with applicable requirements of 34 CFR Secs. 300.301, 300.304, and 300.305, and other department rules and standards to determine:

(i) if the child is a child with a disability

under 34 CFR Sec. 300.8; and

(ii) the educational needs of the child.

(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] public agency 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] shall be conducted more often than every three years if:

(i)

the [LEA] public agency determines the educational or related [services] service 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.]

(d)

Each public agency shall follow evaluation procedures in compliance with applicable requirements of 34 CFR Secs. 300.304 and 300.305 and other department rules or standards.

(3)

Evaluation

before termination of eligibility.

(a)

Pursuant to 34 CFR Sec. 300.305(e) (1), each public agency shall evaluate a child with a disability in accordance with 34 CFR Secs. 300.304 through 300.311 before determining that the child is no longer a child with a disability.

(b)

Pursuant to 34 CFR Sec. 300.305(e) (2), evaluation before termination of eligibility is not required when a child graduates from secondary school with a regular high school diploma or the termination is due to the child exceeding the age of eligibility for special education upon turning 22 years old. In these circumstances, the public agency must provide the child with a summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting postsecondary goals as required by 34 CFR Sec. 300.305(e)(3).

[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.

D. Consent for

evaluation.

(1)

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.

(2)

The public agency shall obtain written informed parental consent for the initial evaluation or reevaluation in accordance with the requirements of 34 CFR Sec. 300.300 and subsection of F of 6.31.2.13 NMAC prior to conducting any evaluation.

(3)

The public agency may pursue an evaluation or reevaluation by using the consent override procedures described in 34 CFR Sec. 300.300(a)(3).]

(4)

The public agency shall document its attempts to obtain parental consent.

D.

Evaluation requests

and referrals.

(1)

Either a parent of a child or a public agency may initiate a request for a full and individual evaluation to determine if the child is a child with a disability or may request a reevaluation to determine if the child's educational needs have changed.

(2)

The request for initial evaluation or reevaluation by a parent may be made in writing or orally to any licensed personnel of the school in which the student attends. A parental request for a full and individual evaluation shall be forwarded or communicated to the school or district special education director or a school or district administrator as soon as possible after it is received.

(3)

The public agency shall respond to a parental request for initial evaluation or reevaluation to the public agency no later than 15 school days from the receipt of the request. If a parent request for an evaluation or reevaluation is received within 15 school days before the start of a scheduled period in which student attendance is not required for at



least 14 calendar days, the public agency shall respond no later than 30 calendar days from the date of the request.

(4) The public agency shall respond to a parental request for initial evaluation or reevaluation by:

(a) providing prior written notice consistent with 34 CFR Sec. 300.503 that proposes to conduct the requested evaluation or reevaluation, providing a copy of the procedural safeguards notice to parents required by 34 CFR Sec. 300.504, and seeking parental consent for the evaluation; or

(b) providing prior written notice consistent with 34 CFR Sec. 300.503 of the public agency's refusal to conduct the evaluation or reevaluation and a copy of the procedural safeguards notice required by 34 CFR Sec. 300.504.

(5) When the public agency makes a referral for an evaluation without a parental request, the public agency shall provide prior written notice consistent with 34 CFR Sec. 300.503 that proposes to conduct the requested evaluation or reevaluation, providing a copy of the procedural safeguards notice to parents required by 34 CFR Sec. 300.504, and seek parental consent for the evaluation no later than 15 school days from the referral. If a referral for an evaluation or reevaluation is made within 15 school days before the start of a scheduled period in which student attendance is not required for at least 14 calendar days, the public agency shall request parental consent no later than 30 calendar days from the date of the referral.

(6) The parent may use the IDEA procedural safeguards of mediation, state complaint, or due process hearing as set forth in 6.31.12.13 NMAC to challenge the public agency's response to a request for evaluation or reevaluation, or the failure to respond to a parent's request for evaluation or reevaluation.

E. Consent for evaluation.

(1) 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.

(2) The public agency shall obtain written informed parental consent for the initial evaluation or reevaluation in accordance with the requirements of 34 CFR Sec. 300.300 and subsection of F of 6.31.2.13 NMAC prior to conducting any evaluation.

(3) The public agency may pursue an evaluation or reevaluation by using the consent override procedures described in 34 CFR Sec. 300.300(a)(3).

(4) The public agency shall document its attempts to obtain parental consent.

F. Timelines for evaluations.

(1) Each public agency shall maintain a record of the receipt, processing, and disposition of any request or referral for an initial evaluation or reevaluation. All appropriate evaluation data, including complete Student Assistance Team file documentation, multi-layered system of supports data, and summary reports from all individuals evaluating the child shall be reported in writing for presentation to the eligibility determination team.

(2) The initial evaluation and written evaluation report shall be completed within 60 calendar days of receiving parental consent for evaluation.

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

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

(b) 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. This 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.

G. Procedures for conducting evaluations and reevaluations.

(1) Each public agency shall ensure that the child is evaluated in all areas related to the suspected disability and shall ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs, regardless of whether they are commonly linked to the disability category in which the child has been classified. The public agency shall follow the procedures for evaluations and reevaluations established by 34 CFR Secs. 300.304 and 300.305, department rules, and standards for evaluations and reevaluations set forth in the New Mexico technical evaluation and assessment manual (New Mexico T.E.A.M.).

(2) 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.

(3) In conducting an evaluation, the public agency shall:

(a) 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:

(i) in determining if the child is a child

with a disability; and

(ii)

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.

(b)

not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(c)

use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(4) The

public agency shall provide the parents with a written report of the evaluation or reevaluation at least two calendar days before the eligibility determination team meeting.

#### **H. 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 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).

(3) 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 shall include appropriate references to such standards and concerns in their written reports.

(4) Policies for

public agency selection of assessment instruments include:

(a)

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

(b)

assessments that are selected to ensure that results accurately reflect the child's aptitude or achievement level.

#### **I. Independent education evaluations.**

(4) The

parent of a child with a disability who disagrees with an evaluation or reevaluation conducted or obtained by the public agency have the right to request an independent educational evaluation of the child at public expense pursuant to 34 CFR Sec. 300.502.]

(1) The

parents of a child [with a disability] who disagree with an evaluation or reevaluation of their child 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 and this subsection. A parent is entitled to only one independent educational evaluation at public expense each time the public agency

conducts an evaluation with which the parent disagrees.

(2) If a parent

requests an independent educational evaluation at public expense, the public agency shall, without unnecessary delay:

(a)

file a due process complaint to show its evaluation is appropriate; or

(b)

ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing the evaluation obtained by the parent did not meet agency criteria.

(3) If a parent

requests an independent educational evaluation at public expense, the public agency may ask for the parent's reasons why he or she objects to the public agency evaluation, but may not require that parent to provide an explanation. The public agency may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public agency evaluation.

(4) If the

parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense and the evaluation meets agency criteria, the public agency must consider the evaluation in any decision made with respect to the provision of FAPE to the child and the evaluation may be presented as evidence at a due process hearing regarding the child.

#### **J. Eligibility**

determinations.

(1) Upon

completing the full and individual evaluation and written evaluation report, the public agency shall convene a meeting of the eligibility determination team, which shall include the parent and a group of qualified professionals, within 15 school days to determine whether the child is a child with a disability and requires special education and related services, as defined in 34 CFR Sec.

300.8 and Paragraph (2) of Subsection B of 6.31.2.7 NMAC. If an individual evaluation is completed during a scheduled period in which student attendance is not required for at least 14 calendar days, the public agency shall convene both a meeting of the eligibility determination team and (if the child is determined eligible) a meeting of the IEP team to develop or revise the child's IEP no later than 15 school days from the first day when student attendance resumes. 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. The eligibility determination team meeting includes a review of the full and individual evaluation to determine:

- (a) the educational needs of the child;
- (b) if the child is a child with a disability; and
- (c) if the child requires special education and related services as a result of the disability.

(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] are not eligible for special education under any other disability category.

(b) Children who are eligible as children with developmental delay 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 is not eligible for special education and related services under any other eligibility category at age 10 will

no longer be eligible for special education and related services.

K. Criteria for identifying children with suspected specific learning disabilities.

(1) Each public agency shall use the multi-layered system of supports for students suspected of having a 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 the multi-layered system of supports 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);

(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);

(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) A parent may request a full and individual evaluation for eligibility for special education at any time during the public agency's implementation of the multi-layered system of supports. 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 and Subsection D of this section. The parent may challenge the decision to decline a request for evaluation by

requesting mediation or a due process hearing or by submitting a state complaint.

(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.

(3) Public agencies shall use the dual discrepancy model to identify children with specific learning disabilities in kindergarten through grade 12 as described in the New Mexico technical evaluation and assessment manual. When using this model, public agencies shall utilize information provided, in part, by the student assistance team, as well as data and information obtained through the use of the multi-layered system of supports.

[6.31.2.10 NMAC - Rp, 6.31.2.10 NMAC, 7/14/2020; A, 7/1/2023]

#### **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:

**(i)**

instruction;

**(ii)**

related services;

**(iii)**

community experiences;

**(iv)**

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~~ Subsection E 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; A, 7/1/2023]

#### **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;

<p>is a mutual request signed by both parties or their designated representatives;</p>	<p>(iii) 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.</p>	<p>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 SED's decision and further guidance, as appropriate.</p>
<p>(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</p>	<p>(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>	<p>(b) 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>(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.</p>	<p>(i) 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>(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>(c) Formal dispute resolution.</p>	<p>(ii) 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>(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>(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.</p>	<p>(iii) 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>(3) Preliminary meeting.</p>
<p>(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.</p>	<p>(2) Requirements for complaints.</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</p>
<p>(d) The Mediation Procedures Act, Section 44-7B-1 et seq. NMSA 1978, does not apply to mediations conducted under 6.31.2 NMAC.</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</p>	
<p>H. State complaint procedures.</p>		
<p>(1) Scope and dissemination.</p>		
<p>(a) Subsection H of 6.31.2.13 NMAC prescribes procedures to be used in filing and processing complaints</p>		

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.

**(b)**

Mediation requirements. If the parties choose to use mediation, the following requirements apply.

**(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.

**(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.

**(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.

**(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.

**(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.

**(vi)**

Any other requirement provided in 34 CFR 300.506(b) that is not otherwise provided herein.

**(4) Complaints**

and due process hearings on the same issues, which are pursuant to 34 CFR Sec. 300.152(c).

**(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.

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] (25) of this subsection;

**(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] this paragraph.

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:

- (i) 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; A, 7/1/2023]

## PUBLIC EDUCATION DEPARTMENT

**This is an amendment to 6.60.7 NMAC, Sections 2, 3, 6, 7, 9 and 11, effective 01/18/2023.**

**6.60.7.2 SCOPE:** ~~[Any and all applicants and applications for obtaining a department license, renewing or advancing a license, certification, and/or license endorsement]~~ Individuals submitting initial and renewal applications for educational licensure and adding endorsements.

[6.60.7.2 NMAC - Rp, 6.60.7.2 NMAC, 8/13/2019; A, 1/18/2023]

**6.60.7.3 STATUTORY AUTHORITY:** Sections 9-24-8, 22-2-1, 22-2-2, 22-8-44, and 22-10A-3 NMSA 1978.

[6.60.7.3 NMAC - Rp, 6.60.7.3 NMAC, 8/13/2019; A, 1/18/2023]

**6.60.7.6 OBJECTIVE:**  
~~[This rule establishes fees for applicants and applications]~~ This rule establishes requirements for the payment of fees that apply to initial and renewal applications for educational licensure and additional endorsements.

[6.60.7.6 NMAC - Rp, 6.60.7.6 NMAC, 8/13/2019; A, 1/18/2023]

**6.60.7.7 DEFINITIONS:**

**A. "Applicant"**

means a person who has submitted ~~[an application or who]~~ or intends to submit an application to the department.

**B. "Application"**

means a formal written or online request, on a department-approved form, to the department for issuance of a department license, license renewal, license continuation, license advancement, certification, or license endorsement.

**C. "Application fee"**

means all fees, monies, remittances, or charges owed for the processing of a department application but does not include any additional fees, monies, or charges owed for the processing of a background check.

**D. "Indigence"**

means the financial inability to pay or afford, without extreme hardship, an application fee.

**E. "Micro-credential"**

means a competency-based process made up of several courses, each focused on a discrete skill or area aligned with the educator evaluation system.

**[E] E. "Military**

**member"** means an active duty member or reservist, or spouse or dependent of a person currently serving in the armed forces or armed forces reserve, of the United States.

**[F] G. "PDD"** means the professional development dossier defined in 6.69.4.11 NMAC for advancing from a level one to level two license or from a level two to level three license.

**[G] H. "PDD strand"**

means one of three categories used to measure evidence of teacher competency on the professional development dossier. Submission of any of the following strands will incur fees:

- (1) the instruction strand;
- (2) the student learning strand; and
- (3) the professional learning strand.

**[H] I. "Veteran"** means

an individual who has received an honorable discharge or separation from the armed forces of the United States.

[6.60.7.7 NMAC - Rp, 6.60.7.7 NMAC, 8/13/2019, A, 6/9/2020; A, 1/18/2023]

**6.60.7.9 FEE SCHEDULE:**

**A. Initial licensure**

applications. Applicants for initial licensure shall pay an application fee of one hundred fifty dollars (\$150) unless another application fee is specified below:

- (1) applicants for initial licensure as an educational assistant shall pay an application fee of fifty dollars (\$50);
- (2) applicants for initial licensure as a school health assistant shall pay an application fee of fifty dollars (\$50);
- (3) applicants for initial licensure as a substitute teacher shall pay an application fee of fifty dollars (\$50);
- (4) applicants for initial licensure as an athletic coach shall pay an application fee of fifty dollars (\$50); and
- (5) applicants for initial licensure for Native American language and culture certification shall pay a fee of fifty dollars (\$50).

**B. Renewal**

applications of an existing educator license. Applicants for renewal of an existing educator license shall pay an application fee of one hundred twenty dollars (\$120) unless another application fee is specified below:



(1) applicants for renewal of an existing educator license as an administrator shall pay an application fee of one hundred thirty dollars (\$130);

(2) applicants for renewal of an existing educator license as an educational assistant shall pay an application fee of fifty dollars (\$50);

(3) applicants for renewal of an existing educator license as a school health assistant shall pay an application fee of fifty dollars (\$50); and

(4) applicants for renewal of an existing educator license as a substitute teacher shall pay an application fee of fifty dollars (\$50).

**C. Renewal applications of an existing certification.**

(1) Applicants for renewal of an existing educator certification shall pay a renewal application fee of one hundred twenty dollars (\$120).

(2) Applicants for renewal of Native American language and culture certification shall pay a fee of fifty dollars (\$50).

**D. Advancement applications by completion of the PDD.**

(1) Applicants who have not previously submitted an application for advancement to a higher level of teacher license for the level of license sought shall pay three hundred twenty dollars (\$320).

(2) Applicants who have previously submitted an application for advancement to a higher level of teacher license for the level of license sought shall pay:

(a) one hundred ten dollars (\$110) for an application that includes one PDD strand;

(b) two hundred twenty dollars (\$220) for an application that includes two PDD strands; or

(c) three hundred twenty dollars (\$320) for an application that includes three PDD strands.

(3) Applicants who concurrently submit a renewal of existing educator license application and an advancement application shall pay no renewal of existing application fee.

(4) In order to concurrently submit a renewal of existing educator license application and an advancement application the following must occur:

(a) the advancement application must be submitted on the same date or before the renewal of an existing educator license application;

(b) the advancement application fees must be received upon the date of the advancement application submission; and

(c) the renewal of existing educator license application must be received by the department within five business days of the advancement application.

**E. Applicants seeking advancement to higher levels of licensure by completion of a series of micro-credentials shall pay a fee of \$60 per micro-credential.**

**[E] E. Endorsement applications.** Applicants seeking to add an endorsement to an existing license shall pay a fee of one hundred twenty dollars (\$120).

[6.60.7.9 NMAC - Rp, 6.60.7.9 NMAC, 8/13/2019, A, 6/9/2020; A, 1/18/2023]

#### **6.60.7.11 STANDARD OF INDIGENCE:**

**A.** An indigence determination shall be made according to the following process:

(1) The request for indigence:

(a) shall be made on a form approved by the department;

(b) shall include any supporting documentation and be submitted to the department within five business days of any application submission; and

(c) a request for indigence shall include

a signed statement, certifying that the licensee is indigent.

(2) The department's review:

(a) the department shall review and make a determination of indigence within 30 days;

(b) the determination shall not consider any potential loss or gain of income associated with a department license, renewal, license continuation, license advancement, license, certification, or license endorsement;

(c) the determination of indigence shall be solely within the discretion of the department; and

(d) the determination of indigence shall be final and not subject to review.

**B.** An applicant is presumed indigent if the applicant is a current recipient of one or more of the following:

(1) medicaid;  
(2) supplemental security income [(SSI)];  
(3) public assisted housing;  
(4) department of health case management services [(DHMS)]; or

(5) temporary assistance for needy families [(TANF)].

[6.60.7.11 NMAC - N, 6.60.7.11 NMAC, 8/13/2019; A, 1/18/2023]

### **REGULATION AND LICENSING DEPARTMENT COUNSELING AND THERAPY PRACTICE BOARD**

The NM Counseling and Therapy Practice Board approved at its 12/18/2022 hearing, to repeal its rule 16.27.24 NMAC, Licensure for Military Service Members, Spouses and Veterans, filed 11/30/2021, and replace it with 16.27.24 NMAC, Expedited Licensure, adopted on 12/18/2022 and effective 1/18/2023.

**REGULATION  
AND LICENSING  
DEPARTMENT  
COUNSELING AND THERAPY  
PRACTICE BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 27 COUNSELORS  
AND THERAPISTS  
PART 24 EXPEDITED  
LICENSURE**

**16.27.24.1 ISSUING**

**AGENCY:** Regulation and Licensing Department-Counseling and Therapy Practice Board.

[16.27.24.1 NMAC - Rp, 16.27.24.1 NMAC, 1/18/2023]

**16.27.24.2 SCOPE:** The

provisions in Part 24 of Chapter 27 apply to all applicants for expedited licensure.

[16.27.24.2 NMAC - Rp, 16.27.24.2 NMAC, 1/18/2023]

**16.27.24.3 STATUTORY**

**AUTHORITY:** These rules are promulgated pursuant to the Counseling and Therapy Practice Act, Sections 61-9A-1 through -30 NMSA 1978, specifically including Section 61-9A-9, and the Uniform Licensing Act, Sections 61-1-31.1 and -34 NMSA 1978.

[16.27.24.3 NMAC - Rp, 16.27.24.3 NMAC, 1/18/2023]

**16.27.24.4**

**DURATION:** Permanent.

[16.27.24.4 NMAC - Rp, 16.27.24.4 NMAC, 1/18/2023]

**16.27.24.5 EFFECTIVE**

**DATE:** January 18, 2023, unless a later date is cited at the end of a section.

[16.27.24.5 NMAC - Rp, 16.27.24.5 NMAC, 1/18/2023]

**16.27.24.6 OBJECTIVE:** The objective of Part 24 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure.

[16.27.24.6 NMAC - Rp, 16.27.24.6 NMAC, 1/18/2023]

**16.27.24.7 DEFINITIONS:**

**A. “Eligible jurisdiction”** means:

(1) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in 16.27.24.8 NMAC; and

(2) any foreign country included in 16.27.24.9 NMAC.

**B. “Expedited license”** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board, and also referred to as expedited licensure by credentials in Section 61-9A-22 NMSA 1978.

**C. “Good standing”** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. “Jurisdiction”** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**E. “Licensing fee”** has the same meaning as defined in Paragraph (1) Subsection E of Section 61-1-34 NMSA 1978.

**F. “Military service member”** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

**G. “Qualified applicant”** means an applicant who:

(1) holds a current license in good standing in another jurisdiction, provided that an applicant who is not a military service member or veteran must hold a current license in good standing in an eligible jurisdiction;

(2) possesses a master’s or doctoral degree in counseling or a counseling related field from an accredited institution;

(3) does not have a disqualifying criminal

conviction, as defined in the board’s rules;

(4) has practiced as a licensed professional for at least two consecutive years immediately prior to application; and

(5) is not, and has not been, subject to formal disciplinary action by a licensing board in New Mexico or any other jurisdiction within the past two years.

**H. “Veteran”** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.27.24.7 NMAC - Rp, 16.27.24.7 NMAC, 1/18/2023]

**16.27.24.8 LIST OF  
DISAPPROVED LICENSING  
JURISDICTIONS; REASONS:**

**A. Licensed mental health counselor (LMHC).**

(1) Disapproved jurisdictions: Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as a LMHC under Section 61-9A-22 NMSA 1978, of the Counseling and Therapy Practice Act:

(a) Alaska, Hawaii, Massachusetts, New Hampshire, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, U.S. Virgin Islands, and Vermont, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate this associate level practitioner;

(b) Arizona, California, Colorado, Connecticut, Florida, Georgia, Kentucky, Louisiana, Michigan, Montana, Nebraska, Nevada, North Carolina, Oklahoma, Puerto Rico, South Carolina, Utah, Virginia, Washington, West Virginia, and Wyoming, on the grounds that the education, training, and/or examination requirements for licensure are not consistent with New Mexico’s minimum requirements.

(c) American Samoa, on the grounds that education and examination requirements cannot be determined.

(2) Approved jurisdictions: Jurisdictions approved for expedited licensure as a LMHC, and the approved license type from each approved jurisdiction, are as follows: Alabama – associate licensed counselor (ALC); Arkansas and New Jersey – licensed associate counselor (LAC); Delaware (licensed associate counselor of mental health (LACMH); Idaho, Illinois, Kansas, Minnesota, North Dakota, Ohio, South Dakota, – licensed professional counselor (LPC); Indiana – licensed mental health counselor associate (LMHCA); Iowa – temporary licensed mental health counselor (T-LMHC); Maine – licensed professional counselor (LPC), conditional LPC, and conditional licensed clinical professional counselor (conditional LCPC); Maryland – licensed graduate professional counselor (LGPC); Mississippi and Missouri – provisional licensed professional counselor (P-LPC); Texas – licensed professional counselor intern (LPC-Intern); Northern Mariana Islands – licensed mental health counselor (LMHC) and licensed mental health counselor associate (LMHCA); Guam – licensed mental health counselor (LMHC).

**B.** Licensed professional clinical mental health counselor (LPCC).

(1) Disapproved jurisdictions: Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as a LPCC under Section 61-9A-22 of the Counseling and Therapy Practice Act:

(a) Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Northern Mariana Islands, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, U.S. Virgin

Islands, Washington, West Virginia, Wisconsin, and Wyoming, on the grounds that the education, training, or examination requirements for licensure are not consistent with New Mexico's minimum requirements.

(b) American Samoa, on the grounds that education and examination requirements cannot be determined.

(2) Approved jurisdictions: Jurisdictions approved for expedited licensure as a LPCC, and the approved license type from each jurisdiction include: Alaska, Arkansas, and Mississippi – licensed professional counselor (LPC); Idaho, Illinois, Kansas, and Maine – licensed clinical professional counselor (LCPC); Indiana – licensed mental health counselor (LMHC); Minnesota, North Dakota, and Ohio – licensed professional clinical counselor (LPCC); South Dakota – licensed professional counselor-mental health (LPC-MH); Vermont – licensed clinical mental health counselor (LCMHC).

**C.** Licensed professional art therapist (LPAT).

(1) Disapproved jurisdictions: Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as a LPAT under Section 61-9A-22 NMSA 1978, of the Counseling and Therapy Practice Act:

(a) Alabama, Alaska, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Pennsylvania, Oklahoma, Puerto Rico, Rhode Island, South Carolina, South Dakota, Utah, U.S. Virgin Islands, Vermont, Washington, West Virginia, and Wyoming, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate this profession.

(b) Colorado and Texas, on the grounds

that the education, training, or examination requirements for licensure are not consistent with New Mexico's minimum requirements.

(2) Approved jurisdictions: Jurisdictions approved for expedited licensure as a LPAT, and the approved license type from each jurisdiction include: Arkansas – LPC with specialization license in art therapy; Connecticut – clinical licensed art therapist (CLAT); Delaware, District of Columbia, Kentucky, Mississippi, New Jersey, and Tennessee – licensed professional art therapist (LPAT); Maryland – licensed clinical professional art therapist (LCPAT); New York and Oregon – licensed creative arts therapist (LCAT); Virginia – licensed art therapist (LAT); Wisconsin – registered art therapist with license to practice psychotherapy.

**D.** Licensed associate marriage and family therapist (LAMFT).

(1) Disapproved jurisdictions: Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as a LAMFT under Section 61-9A-22 NMSA 1978, of the Counseling and Therapy Practice Act:

(a) American Samoa, District of Columbia, Guam, Hawaii, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New York, Northern Mariana Islands, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, U.S. Virgin Islands, Vermont, and Virginia, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate this profession.

(b) Alabama, Alaska, California, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Louisiana, Montana, Nevada, New Jersey, Oregon, Tennessee, Utah, Washington, West Virginia, Wisconsin, and Wyoming, on the grounds that the education, training,

or examination requirements for licensure are not consistent with New Mexico's minimum requirements.

**(2) Approved jurisdictions:**

Jurisdictions approved for expedited licensure as a LAMFT, and the approved license type from each jurisdiction include: Arizona, Arkansas, Delaware, Idaho, Minnesota, and North Dakota – licensed associate marriage and family therapist (LAMFT); Indiana, Kentucky, Mississippi, North Carolina, Ohio, South Carolina, and Texas – licensed marriage and family therapist associate (LMFTA); Kansas – licensed marriage and family therapist (LMFT); Maine – conditional marriage and family therapist license; Maryland – licensed graduate marriage and family therapist (LGMFT).

**E.** Licensed marriage and family therapist (LMFT).

**(1)**

Disapproved jurisdictions: Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure as a LMFT under Section 61-9A-22 NMSA 1978, of the Counseling and Therapy Practice Act:

**(a)**

American Samoa and Puerto Rico, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate this profession.

**(b)**

California, on the grounds that the education, training, or examination requirements for licensure are not consistent with New Mexico's minimum requirements.

**(c)**

Northern Mariana Islands, on the grounds that education, training and examination requirements cannot be determined.

**(2)**

Approved jurisdictions: Jurisdictions approved for expedited licensure as a LMFT, and the approved license type from each jurisdiction include: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam,

Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming – licensed marriage and family therapist (LMFT); Maryland – licensed clinical marriage and family therapist (LCMFT); Nebraska – licensed mental health practitioner – MFT certification; Ohio – licensed independent marriage and family therapist (LIMFT).

[16.27.24.8 NMAC - Rp, 16.27.24.8 NMAC, 1/28/2023]

**16.27.24.9 LIST OF APPROVED FOREIGN JURISDICTIONS:**

**[RESERVED]**

[16.27.24.9 NMAC - Repealed, 16.27.24.9 NMAC, 1/18/2023]

**16.27.24.10 EXPEDITED LICENSURE APPLICATION:**

**A.** An applicant for expedited licensure under Section 61-1-31.1 NMSA 1978 must submit to the board a complete application containing all of the following:

**(1) A**

completed and signed application form;

**(2) Proof of**

a current license in good standing in an eligible jurisdiction as defined in these rules; and

**(3) Payment**

of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-1-36 NMSA 1978:

**(1) The**

matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

**(2) The**

license may not be issued within 30 days of submission of the complete application; and

**(3) The board**

may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.27.24.10 NMAC - N, 1/18/2023]

**16.27.24.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing all of the following:

**(1) A**

completed and signed application form;

**(2) Proof of**

a current license in good standing in another jurisdiction, including a branch of the United States armed forces; and

**(3)**

Submission of the following documentation:

**(a)**

for military service member: a copy of military orders;

**(b)**

for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

**(c)**

for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

**(d)**

for dependent children of military service members: a copy of



military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency; or

(e)

for veterans (retired or separated): proof of honorable discharge such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by Subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-1-36 NMSA 1978:

(1) The matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) The license may not be issued within 30 days of submission of the complete application; and

(3) The board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board.  
[16.27.24.11 NMAC – N, 1/18/2023]

#### **16.27.24.12 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular initial license issued by the board. Initial licenses, including expedited licenses, may be issued for a period greater than twelve months, but less than 24 months, in order to align the license expiration date with the board's renewal cycle.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that, if the licensee holding an expedited license was not required by the licensee's licensing jurisdiction outside of New Mexico to pass a national or state examination normally required for licensure in New Mexico, the licensee shall be required to pass the examination prior to renewing the license.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.  
[16.27.24.12 NMAC - N, 1/18/2023]

#### **History of 16.27.24 NMAC:**

16.27.24 NMAC - Licensure for Military Service Members, Spouses and Veterans, filed 10/15/2014, was repealed and replaced by 16.27.24 NMAC - Licensure for Military Service Members, Spouses and Veterans, effective 11/30/2021.

16.27.24 NMAC - Licensure for Military Service Members, Spouses and Veterans, filed 11/30/2021, was repealed and replaced by 16.27.24 NMAC – Expedited Licensure, effective 1/18/2023.

### **REGULATION AND LICENSING DEPARTMENT COUNSELING AND THERAPY PRACTICE BOARD**

**This is an amendment to 16.27.3 NMAC, Sections 8 and 10, effective 1/18/2023.**

#### **16.27.3.8 APPLICATIONS FOR LICENSURE BY EXAMINATION:**

**A.** All applicants for licensure by examination must submit the following documentation to the board:

(1) a completed application, signed by the applicant;

(2) a 2" x 2" photograph of the applicant taken within the preceding six months;

(3) an application fee of \$75;

(4) an official transcript in their original and sealed envelope or electronically sent directly to the board's e-mail address from each institution where the applicant completed an appropriate degree for the license type sought;

(5) if required, a statement from each supervisor on a form provided by the board verifying the applicant's supervised experience and setting forth the nature and extent of each supervision; the forms must be submitted in a sealed envelope to the board office;

(6) other documentation required in [16.27.4 through 8 NMAC, and 16.27.18 through 23 NMAC] 16.27.4 NMAC through 16.27.8 NMAC, and 16.27.18 NMAC through 16.27.23 NMAC, to document supervision, any additional training or coursework, work experience and client contact hours.

**B.** Applications will be valid for a period not to exceed 12 months from the date it is received at the board's office. An applicant wishing to re-apply after 12 months must submit a new application, including the application fee and all documentation.

**C.** Applicants who are deemed ineligible because of experience or educational deficiencies may request licensure at a lower level. This request from the applicant shall be in writing and include a \$25 application re-review fee as provided for in 16.27.17 NMAC.

[16.27.3.8 NMAC - Rp, 16.27.3.8 NMAC, 11/30/2021; A, 1/18/2023]

**16.27.3.10 INITIAL LICENSE PERIOD:** [The] An initial license will be issued including an expedited license for a period not to exceed 24 months. The issue date of the license will be the date the initial license fee and all other requirements are received at the board office and shall expire on September 30 of the appropriate year to establish the license in a renewal cycle.  
[16.27.3.10 NMAC - Rp, 16.27.3.10 NMAC, 11/30/2021; A, 1/18/2023]

**REGULATION  
AND LICENSING  
DEPARTMENT  
COUNSELING AND THERAPY  
PRACTICE BOARD**

**This is an amendment to 16.27.4 NMAC, Sections 4, 6, 9, 11 and 12, effective 1/18/2023.**

**16.27.4.2 SCOPE:** All individuals applying for licensure by examination as professional clinical mental health counselors.  
[16.27.4.2 NMAC - Rp, 16.27.4.2 NMAC, 11/30/2021; A, 1/18/2023]

**16.27.4.6 OBJECTIVE:** The objective of Part 4 is to state the minimum requirements for licensure by examination as a professional clinical mental health counselor and to list the documentation required for application.  
[16.27.4.6 NMAC - Rp, 16.27.4.6 NMAC, 11/30/2021; A, 1/18/2023]

**16.27.4.9 APPLICANTS FOR LICENSURE BY EXAMINATION: AS A PROFESSIONAL CLINICAL MENTAL HEALTH COUNSELOR (LPCC) MUST POSSESS THE FOLLOWING QUALIFICATIONS AND PROVIDE THE REQUIRED DOCUMENTATION WITH THE APPLICATION:**

**A.** Age requirement. Be at least 21 years of age.

**B.** Applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees

to be bound and governed by the code of ethics.

**C.** Education requirement. Hold a master's or doctoral degree in counseling or a counseling-related field from an accredited institution. Applicants who hold a degree in a related-field must complete attachment E. The board may request syllabi as needed to clarify course content.

**D.** Applicants must have a masters or doctoral degree in counseling or a counseling-related field and a total of no less than 48 graduate semester hours or 72 quarter graduate hours in the mental health clinical core curriculum as defined in 16.27.2 NMAC. The hours must be acquired as a part of a master's or doctoral degree, or acquired as additional graduate education to complete the required clinical core curriculum hours.

**E.** Experience requirements.

**(1)** A minimum of two years' postgraduate professional clinical counseling experience.

**(2)** Evidence of having participated in a total of 3,000 hours of postgraduate clinical client contact and 100 hours of appropriate face to face postgraduate supervision. Up to 1,000 clinical client contact hours may be from the applicant's internship or practicum. Credit is automatically awarded by board staff based on the number of semester or quarter hours in practicum and internship listed on official transcripts. This credit should not be included on the attachment B form used for verifying postgraduate experience.

**F.** Application fee of \$75.00 as provided for in Part 17.  
[16.27.4.9 NMAC - Rp, 16.27.4.9 NMAC, 11/30/2021; A, 1/18/2023]

**16.27.4.11 DOCUMENTATION REQUIRED FOR LICENSURE BY EXAMINATION:**

**A.** A completed application as specified in 16.27.3.8 NMAC.

**B.** Proof of education and experience requirements:

**(1)** The applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree, a total of no less than 48 graduate semester hours or 72 quarter graduate hours which includes the required clinical core curriculum. Applicants who have just graduated with an appropriate degree field, and whose degrees have not yet been conferred by their university, may submit the following documentation in while awaiting official transcripts to become available:

**(a)** A verification letter from a university official verifying

**(i)** their degree program;

**(ii)** that all courses have been completed and they have earned passing grades;

**(iii)** their degrees will be conferred by the university; and

**(b)** A receipt verifying that they have ordered their transcripts to be sent to the board office once their degree is conferred.

**(2)** A statement from each supervisor in a sealed envelope on a form provided by the board (attachment B) verifying the applicant's supervised experience and setting forth the nature and extent of such supervision must be submitted with the application. The statement shall verify that the applicant's performance was in accordance with adequate counseling and therapy standards of practice. If a supervisor's statement is not available, the applicant may submit documentation explaining why the supervisor's statement is not available and sworn affidavits from other individuals verifying that supervision took place and describing the nature and the extent of the supervision.

**(3)** Documentation of 3,000 hours of postgraduate direct clinical client

contact and 100 hours of appropriate face to face postgraduate supervision.

(4)

Attachment E, listing only specific graduate coursework. The board may request syllabi as needed to clarify course content.

(5)

If submitting hours obtained in another jurisdiction, documentation of the applicant's licensure, registration or certification status must be submitted on attachment form A which must be sent directly to the board by the jurisdiction in which the applicant is licensed, certified or registered. [16.27.4.11 NMAC - Rp, 16.27.4.11 NMAC, 11/30/2021; A, 1/18/2023]

**16.27.4.12 [LICENSURE BY CREDENTIALS:**

~~A. A completed application as specified in 16.27.3.8 NMAC.~~

~~B. Verification (attachment A) that the applicant holds and has held a current independent license for two years issued by the appropriate examining board under the law of any other state or territory of the United States, the District of Columbia or any foreign nation.~~

~~C. Verification that the applicant is in good standing with no disciplinary action pending or brought against the applicant within the past two years.~~

~~D. Holds masters or doctoral degree in counseling or a counseling-related field from an accredited institution.~~

~~E. Application fee of \$75.00 as provided for in Part 17.~~

~~F. Applicants who do not meet the licensure by reciprocity requirements must meet the current standard licensure requirements.]~~

**[RESERVED]**

[16.27.4.12 NMAC - Rp, 16.27.4.12 NMAC, 11/30/2021; Repealed, 1/18/2023]

**REGULATION  
AND LICENSING  
DEPARTMENT  
COUNSELING AND THERAPY  
PRACTICE BOARD**

**This is an amendment to 16.27.6 NMAC, Sections 2, 6, 9, 11 and 12, effective 1/18/2023.**

**16.27.6.2 SCOPE:** All individuals applying for licensure by examination as professional marriage and family therapists.

[16.27.6.2 NMAC - Rp 16 NMAC 27.5.2, 6/15/2001; A, 1/18/2023]

**16.27.6.6 OBJECTIVE:**

The objective of Part 6 is to state the minimum requirements for licensure by examination as a marriage and family therapist and to list the documentation required for application.

[16.27.6.6 NMAC - Rp 16 NMAC 27.5.6, 6/15/2001; A, 1/18/2023]

**16.27.6.9 APPLICANTS FOR LICENSURE BY**

**EXAMINATION:** As a marriage and family therapist (LMFT) must possess the following qualifications and provide the required documentation with the application:

**A.** Age requirement.  
Be at least 21 years of age.

**B.** Applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics.

**C.** Hold a master's or doctoral degree from an accredited institution in marriage and family therapy, meets the requirements of the core curriculum in marriage and family therapy.

**D.** Experience requirements.

(1) A minimum of two years' postgraduate marriage and family therapy experience.

(2) Evidence of having participated in a total of at least 1,000 hours of postgraduate

marriage and family clinical client contact.

(3) 200 hours of appropriate postgraduate marriage and family supervision, including at least 100 hours of individual supervision. The appropriate supervision must be received from an individual who has education, clinical experience and supervisory experience in the field of marriage and family therapy.

**E.** Application fee of \$75.00.

[16.27.6.9 NMAC - Rp 16 NMAC 27.5.8, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 11/30/2021; A, 1/18/2023]

**16.27.6.11 DOCUMENTATION REQUIRED FOR LICENSURE BY EXAMINATION:**

**A.** A completed application as specified in 16.27.3.8 NMAC.

**B.** Proof of education and experience requirements:

(1) the applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree; the transcript must be submitted with the application; applicants educated in foreign institutions who are unable to submit certified official transcripts shall submit a statement explaining why such transcripts are not available and shall submit certified copies of the degree certificates granted, information on the curricula offered, and any other documentation requested by the board [and]. Applicants who have just graduated with an appropriate degree field, and whose degrees have not yet been conferred by their university, may submit the following documentation in while awaiting official transcripts to become available:

(a) A verification letter from a university official verifying

(i) their degree program;

(ii) that all courses have been completed

and they have earned passing grades;  
(iii) their degrees will be conferred by the university; and

(b)

A receipt verifying that they have ordered their transcripts to be sent to the board office once their degree is conferred;

(2) a statement

from each supervisor in a sealed envelope on a form provided by the board (attachment B) verifying the applicant's supervised experience and setting forth the nature and extent of such supervision must be submitted with the application; the statement shall verify that the applicant's performance was in accordance with adequate counseling and therapy standards of practice; if a supervisor's statement is not available, the applicant may submit documentation explaining why the supervisor's statement is not available and sworn affidavits from other individuals verifying that supervision took place and describing the nature and the extent of the supervision;

(3)

documentation of 1,000 hours of postgraduate direct client contact hours in marriage and family therapy and 200 hours of appropriate postgraduate supervision in marriage and family therapy;

(4) if an

applicant has been previously licensed, registered or certified in another state, territory or foreign nation, documentation of the applicant's licensure, registration or certification status shall be submitted on form A of the application;  
[16.27.6.11 NMAC - Rp 16 NMAC 27.5.10, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 11/30/2021; A, 1/18/2023]

#### 16.27.6.12 ~~[LICENSURE BY CREDENTIALS:~~

~~A. A completed application as specified in 16.27.3.8 NMAC.~~

~~B. Verification (attachment A) that the applicant holds and has held a current independent license for two years~~

~~issued by the appropriate examining board under the law of any other state or territory of the United States, the District of Columbia or any foreign nation.~~

~~C. Verification that the applicant is in good standing with no disciplinary action pending or brought against the applicant within the past two years.~~

~~D. Holds masters or doctoral degree in marriage and family therapy, counseling or a counseling-related field from an accredited institution.~~

~~E. Application fee of \$75.00 as provided for in Part 17.~~

~~F. Applicants who do not meet the licensure by reciprocity must meet the current licensure requirements:] [RESERVED]  
[16.27.6.12 NMAC - Rp 16 NMAC 27.9.8&9, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 1/15/2007; A, 11/30/2021; Repealed, 1/18/2023]~~

### REGULATION AND LICENSING DEPARTMENT COUNSELING AND THERAPY PRACTICE BOARD

**This is an amendment to 16.27.7 NMAC, Sections 2, 10, 13 and 14, effective 1/18/2023.**

**16.27.7.2 SCOPE:** All individuals applying for licensure by examination as professional art therapists.

[16.27.7.2 NMAC - Rp, 16.27.7.2 NMAC, 11/30/2021; A, 1/18/2023]

**16.27.7.10 APPLICANTS FOR LICENSURE BY EXAMINATION: AS A PROFESSIONAL ART THERAPIST (LPAT) MUST POSSESS THE FOLLOWING QUALIFICATIONS AND PROVIDE THE REQUIRED DOCUMENTATION WITH THE APPLICATION:** A licensed professional art therapist (LPAT) must possess the following qualifications and provide the required documentation with the application:

**A.** Age requirement.

Be at least 21 years of age.

**B.** Applicant must

sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics.

**C.** Education

requirements. Professional entry into art therapy requires a masters or doctoral degree in art therapy, counseling or counseling related field. Individuals holding a master's degree in a related field may enter the art therapy profession by completing 48 graduate semester hours or 72 quarter hours in the art therapy core curriculum.

**D.** Experience

requirements:

(1) a minimum of two years postgraduate professional art therapy experience;

(2) evidence of having participated in a total of 3000 hours of postgraduate clinical client contact and 100 hours of appropriate face-to-face postgraduate supervision; [700] 1000 clinical client contact hours may be from the applicant's internship or practicum.

**E.** Application fee of \$75.00 as provided for in [Part 17 of 16.27 NMAC] 16.27.17 NMAC.

**F.** Is of good moral character with conduct consistent with the code of ethics.

[16.27.7.10 NMAC - Rp, 16.27.7.10 NMAC, 11/30/2021; A, 1/18/2023]

#### 16.27.7.13 DOCUMENTATION REQUIRED FOR LICENSURE BY EXAMINATION:

**A.** A completed application as specified in 16.27.3.8 NMAC.

**B.** Proof of education and experience:

(1) The applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree a total of no less than 48 semester hours or 72 quarter hours which includes the required clinical



core curriculum. Applicants who have just graduated with an appropriate degree field, and whose degrees have not yet been conferred by their university, may submit the following documentation in while awaiting official transcripts to become available:

(a)

A verification letter from a university official verifying

~~[(1)]~~ (i)

their degree program;

~~[(2)]~~ (ii)

that all courses have been completed and they have earned passing grades;

~~[(3)]~~ (iii)

their degrees will be conferred by the university; and

(b)

A receipt verifying that they have ordered their transcripts to be sent to the board office once their degree is conferred.

(2) A

statement from each supervisor in a sealed envelope on a form provided by the board (attachment B) verifying the applicant's supervised experience and setting forth the nature and extent of such supervision must be submitted with the application; the statement shall verify that the applicant's performance was in accordance with adequate counseling and therapy standards of practice; if a supervisor's statement is not available, the applicant may submit documentation explaining why the supervisor's statement is not available and sworn affidavits from other individuals verifying that supervision took place and describing the nature and the extent of the supervision.

(3)

Documentation of 3000 client contact hours and 100 hours of appropriate face-to-face supervision.

(4)

Attachment F, listing only specific graduate coursework. The board may request syllabi as needed to clarify course content.

(5)

Documentation of the applicant's licensure, registration or certification status must be submitted on application attachment form A, which

must be sent directly to the board by the jurisdiction in which the applicant is licensed, certified, or registered.

(6)

Application fee of \$75.00 as provided for in 16.27.17 NMAC.

[16.27.7.13 NMAC - Rp, 16.27.7.13 NMAC, 11/30/2021; A, 1/18/2023]

#### **16.27.7.14 ~~[LICENSURE BY CREDENTIALS:~~**

~~A. A completed application as specified in 16.27.3.8 NMAC.~~

~~B. Verification (attachment A) that the applicant holds and has held a current independent license for two years issued by the appropriate examining board under the law of any other state or territory of the United States, the District of Columbia or any foreign nation.~~

~~C. Verification that the applicant is in good standing with no disciplinary action pending or brought against the applicant within the past two years.~~

~~D. Holds masters or doctoral degree in counseling or a counseling-related field from an accredited institution.~~

~~E. Application fee of \$75.00 as provided for in 16.27.17 NMAC.~~

~~F. Applicants who do not meet the licensure by reciprocity must meet the current licensure requirements.] **[RESERVED]**~~

[16.27.7.14 NMAC - Rp, 16.27.7.14 NMAC, 11/30/2021; Repealed, 1/18/2023]

### **REGULATION AND LICENSING DEPARTMENT COUNSELING AND THERAPY PRACTICE BOARD**

**This is an amendment to 16.27.9 NMAC, Sections 2, 9, 10 and 12, effective 1/18/2023.**

**16.27.9.2 SCOPE:** All individuals applying for licensure by examination as entry level licensed mental health counselors.

[16.27.9.2 NMAC - Rp 16 NMAC 27.8.2, 6/15/2001; A, 1/18/2023]

#### **16.27.9.9 LICENSED MENTAL HEALTH COUNSELOR (MENTAL HEALTH SPECIALTY OR ART THERAPY SPECIALTY):**

**A.** LMHC is intended as a transition between the required degree and the completion of supervised training required for licensure as a professional clinical mental health counselor or a professional art therapist. All work must be performed under appropriate clinical supervision. Applicants must assure that their education and experience are appropriate for the level of licensure they will seek upon completion of supervised training. There is no maximum time limit as a licensed mental health counselor, but all work at this level must be done under clinical supervision.

**B.** Qualifications for entry level licensure by examination. An applicant for licensure by examination as an entry-level mental health counselor (LMHC) must possess the following qualifications:

(1) be at least 21 years of age;

(2) applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics;

(3) holds a masters or doctoral degree in a counseling or counseling related field with no less than 48 graduate hours or 72 quarter hours in the core curriculum and nine practicum hours; and

(4) have arranged for appropriate clinical supervision, as required by their licensure track.

[16.27.9.9 NMAC - Rp 16 NMAC 27.8.8, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 11/30/2021; A, 1/18/2023]

#### **16.27.9.10 DOCUMENTATION REQUIRED FOR LICENSURE BY EXAMINATION:**

**A.** A completed application as specified in 16.27.3.8 NMAC.

**B.** The applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree. The transcript must be submitted with the application. Applicants educated in foreign institutions who are unable to submit certified official transcripts shall submit a statement explaining why such transcripts are not available and shall submit certified copies of the degree certificates granted, information on the curricula offered, and any other documentation requested by the board.

**C.** A statement from each supervisor in a sealed envelope on a form provided by the board (attachment C) verifying the applicant's has arranged for appropriate supervision supervised experience and setting forth the nature and extent of such supervision must be submitted with the application.

**D.** Applicant with the mental health specialty must complete attachment E and art therapy specialty must complete attachment F.

**E.** Application fee of \$75.00.

[16.27.9.10 NMAC - Rp 16 NMAC 27.8.9, 6/15/2001; A, 7/1/2004; A, 2/10/2006; A, 1/18/2023]

#### **16.27.9.12 [LICENSURE BY CREDENTIALS:]**

~~**A.** Submit a completed application per of 16.27.3.8 NMAC.~~

~~**B.** Verification (attachment A) that the applicant holds and has held a current license for five years issued by the appropriate examining board under the law of any other state or territory of the United States, the District of Columbia or any foreign nation.~~

~~**C.** Verification that the applicant is in good standing with no disciplinary action pending or brought against the applicant within the past five years.~~

~~**D.** Holds masters or doctoral degree in counseling or~~

~~a counseling-related field from an accredited institution.~~

~~**E.** Application fee of \$75.00 as provided for in 16.27.17 NMAC.~~

~~**F.** Applicants who do not meet the licensure by reciprocity must meet the current licensure requirements.] [RESERVED]~~  
[16.27.9.12 NMAC - N, 11/30/2021; Repealed, 1/18/2023]

### **REGULATION AND LICENSING DEPARTMENT COUNSELING AND THERAPY PRACTICE BOARD**

**This is an amendment to 16.27.22 NMAC, Sections 2, 6, 9, 10 and 11, effective 1/18/2023.**

**16.27.22.2 SCOPE:** All individuals applying for licensure by examination as an associate marriage and family therapist.

[16.27.22.2 NMAC - N, 2/10/2006; A, 1/18/2023]

**16.27.22.6 OBJECTIVE:** The objective of Part 10 is to state the minimum requirements for licensure by examination as an associate marriage and family therapist and list the documentation required for application.

[16.27.22.6 NMAC - N, 2/10/2006; A, 1/18/2023]

#### **16.27.22.9 LICENSED ASSOCIATE MARRIAGE AND FAMILY THERAPIST (LAMFT):**

**A.** LAMFT is intended as a transition between the required degree and the completion of supervised training required for licensure as a marriage and family therapist. Work must be under appropriate clinical supervision. Applicants must assure that their education and experience are appropriate for the level of licensure. There is no time limit as a licensed associate marriage and family therapist, but all work at this

level must be done under clinical supervision.

**B.** Qualifications for entry-level licensure by examination. An applicant for licensure by examination as an entry-level licensed associate marriage and family therapist (LAMFT) must possess the following qualifications:

(1) be at least 21 years of age; and

(2) applicant must sign a statement provided in the application indicating the applicant has read the code of ethics and agrees to be bound and governed by the code of ethics; and

(3) hold a masters or doctoral degree in a counseling related field from an accredited institution; and

(4) have arranged for appropriate clinical supervision, including a postgraduate experience plan, which includes one hour of face-to-face supervision for every ~~ten~~ five hours of client contact; and

(5) meet the marriage and family clinical core curriculum.  
[16.27.22.9 NMAC - N, 2/10/2006; A, 1/18/2023]

#### **16.27.22.10 DOCUMENTATION REQUIRED FOR LICENSURE BY EXAMINATION:**

**A.** a completed application as specified in 16.27.3.8 NMAC; and

**B.** the applicant is required to submit an official transcript in a sealed envelope from each institution contributing to the applicant's master or doctoral degree; the transcript may be submitted electronically directly by the issuing institution to the board's e-mail address, in their original and sealed envelope with the application, or mailed directly to the board office by the issuing institution. Applicants who have just graduated with an appropriate degree field, and whose degrees have not yet been conferred by their university, may submit the following documentation in while awaiting official transcripts to become available:

(a) (1)

A verification letter from a university official verifying;

(b) (a)

their degree program;

(b) (b)

that all courses have been completed and they have earned passing grades;

(b) (c)

their degrees will be conferred by the university; and

(b) (2)

a receipt verifying that they have ordered their transcripts to be sent to the board office once their degree is conferred; and

C. a statement from each supervisor in a sealed envelope on a form provided by the board (attachment C) verifying the applicant has arranged for appropriate clinical supervision, supervised experience and setting forth the nature and extent of such supervision must be submitted with the application; and

D. applicant must complete and meet the marriage and family core curriculum (form D); and

E. application fee of \$75.00 as provided for in Part 17. [16.27.22.10 NMAC - N, 2/10/2006; A, 11/30/2021; A, 1/18/2023]

**16.27.22.11 EXAMINATION:**

Applicants for licensure by examination must demonstrate professional competency by passing the American marital and family therapy regulatory board (AMFTRB) examination. Should the applicant fail the required examination three times, the board shall not issue another temporary license for that application for license. No prior clinical supervision or clinical hours shall be applied toward the reapplication for license. Upon passing the requisite examination, the applicant holding the temporary LAMFT shall be issued the LAMFT license so that the applicant may continue to practice under supervision and acquire the requisite clinical hours and supervision for the independent LMFT license.

[16.27.22.11 NMAC - N, 2/10/2006; A, 11/30/2021; A, 1/18/2023]

**REGULATION  
AND LICENSING  
DEPARTMENT  
LANDSCAPE ARCHITECTS,  
BOARD OF**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL  
LICENSING  
CHAPTER 44 LANDSCAPE  
ARCHITECTS  
PART 10 EXPEDITED  
LICENSURE**

**16.44.10.1 ISSUING AGENCY:** The New Mexico Board of Landscape Architects. [16.44.10.1 NMAC - N, 1/18/2023]

**16.44.10.2 SCOPE:** The provisions in Part 10 of Chapter 44 apply to all applicants for expedited licensure. [16.44.10.2 NMAC - N, 1/18/2023]

**16.44.10.3 STATUTORY AUTHORITY:** Part 10 is promulgated pursuant to the Landscape Architects Act, Sections 61-24B-1 to 17, NMSA 1978 (specifically Section 61-24B-7 NMSA 1978) and 61-1-31.1 and Section 61-1-34, NMSA 1978, of the Uniform Licensing Act. [16.44.10.3 NMAC - N, 1/18/2023]

**16.44.10.4 DURATION:** Permanent. [16.44.10.4 NMAC - N, 1/18/2023]

**16.44.10.5 EFFECTIVE DATE:** January 18, 2023, unless a later date is cited at the end of a section. [16.44.10.5 NMAC - N, 1/18/2023]

**16.44.10.6 OBJECTIVE:** The objective of Part 10 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure. [16.44.10.6 NMAC - N, 1/18/2023]

**16.44.10.7 DEFINITIONS:**  
A. **"Eligible jurisdiction"** means:

(1) any state or territory of the United States and the District of Columbia, except those included in the list of disapproved licensing jurisdictions in 16.44.10.8 NMAC; and

(2) any foreign country included in 16.44.10.9 NMAC.

**B. "Expedited license"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "License"** has the same meaning as defined in Subsection E of Section 61-1-2 NMSA 1978.

**E. "Licensing fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

**F. "Licensing jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**G. "Military orders"** as pertains to the military service member, means official military orders, including orders from separation or retirement, or any notification, certification or verification from the service member's commanding officer, with respect to the service member's current or future military status.

**H. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

**I. "Qualified applicant"** means an applicant who:  
(1) holds a current license in good standing in an eligible jurisdiction as defined in Subsection A of this section.

(2) does not have a disqualifying criminal conviction, as defined the board's rules; and

(3) is not subject to pending disciplinary action in New Mexico.

**J. “Veteran”** has the same meaning as defined in Paragraph (3) of Subsection E of Section 61-1-34 NMSA 1978.

[16.44.10.7 NMAC - N, 1/18/2023]

#### **16.44.10.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS FOR DISAPPROVAL:**

**A.** Applicants licensed as a landscape architect in the following states and territories of the United States or the District of Columbia shall not be eligible for expedited licensure under Subsection D of Section 61-24B-9 NMSA 1978 of the Landscape Architects Act:

(1) Colorado, Delaware, Florida, Georgia, Idaho, Massachusetts, Michigan, Mississippi, Nevada, Rhode Island, Wisconsin, and Wyoming, on the grounds that the education or experience requirements are not consistent with New Mexico’s minimum requirements for licensure;

(2) District of Columbia, on the grounds that education, experience, and examination requirements cannot be determined; and

(3) American Samoa and the U.S. Virgin Islands, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate landscape architects.

(4) Approved jurisdictions for expedited licensure as landscape architect are: Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Guam, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.

**B.** Applicants licensed as landscape architect in training in

the following states and territories of the United States or the District of Columbia shall not be eligible for expedited licensure under Subsection D of Section 61-24B-9, NMSA 1978 of the Landscape Architects Act:

(1) Idaho, Iowa, and Nevada, on the grounds that the education, experience or examination requirements are not consistent with New Mexico’s minimum requirements for licensure;

(2) Puerto Rico, on the grounds that education, experience, and examination requirements cannot be determined; and

(3) American Samoa, Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, on the grounds that these jurisdictions do not license, register, certify, or otherwise regulate landscape architects in training.

**C.** Approved jurisdictions for expedited licensure as landscape architect in training: Arizona, Oregon, and Utah.

[16.44.10.8 NMAC - N, 1/18/2023]

#### **16.44.10.9 LIST OF APPROVED FOREIGN JURISDICTIONS: [RESERVED]**

#### **16.44.10.10 EXPEDITED LICENSURE APPLICATION:**

**A.** A candidate for expedited licensure under Section 61-1-31.1 NMSA 1978 and Section 61-24B-7 NMSA 1978 must submit to the board a complete application containing all of the following:

(1) a completed and signed application form;

(2) proof of a current license in good standing in an eligible jurisdiction as defined; and

(3) payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board’s staff is in receipt of, all the materials required by subsection A, including documentation from third parties.

**C.** Upon receipt of a complete application, the board’s staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-24B-12 NMSA 1978:

(1) the matter of the applicant’s application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board’s rules.

[16.44.10.10 NMAC - N, 1/18/2023]

#### **16.44.10.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS, SPOUSES, DEPENDENTS AND VETERANS:**

**A.** A candidate for expedited licensure under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing all the following:

(1) a completed and signed application form;

(2) poof of a current license in good standing



in another jurisdiction, including a branch of the United States armed forces; and

(3) submission of the following documentation:

(a) for a military service member, a copy of military orders;

(b) for a spouse of a military service members: copy of military service member's military orders, and copy of marriage license;

(c) for a spouse of a deceased military service member, a copy of decedent's DD 214 and copy of marriage license;

(d) for a dependent child of a military service member, a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency; or

(e) for veterans, retired or separated, proof of honorable discharge such as a copy of DD Form 214, DD Form 215, DD Form 256, DD Form 257, NGB Form 22, military ID card, a driver's license or state ID card with a veteran's designation, or other documentation verifying honorable discharge.

B. An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all the materials required by subsection A, including documentation from third parties.

C. Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

D. If the applicant has a potentially disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-24B-12 NMSA 1978:

(1) the matter of the applicant's application

shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

E. A military service member or veteran who is issued an expedited license shall not be charged a licensing fee or renewal fee for the first three years of licensure by the board.

[16.44.10.11 NMAC - N, 1/18/2023]

#### **16.44.10.12 EXPEDITED LICENSE DURATION AND RENEWAL:**

A. An expedited license shall be valid for the same length of time as a regular initial license issued by the board. Initial licenses, including expedited licenses, may be issued for a period greater than 12, but less than 24 months, in order to align the license expiration date with the board's renewal cycle.

B. A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that, if the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the L.A.R.E exam, the licensee shall be required to pass the examination prior to renewing the license.

C. Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to board rules.

[16.44.10.12 NMAC - N, 1/18/2023]

#### **HISTORY OF 16.44.10 NMAC: [RESERVED]**

### **REGULATION AND LICENSING DEPARTMENT PODIATRY, BOARD OF**

The New Mexico Board of Podiatry reviewed at its 12/16/2022 hearing, to repeal its rule 16.21.4 NMAC, Podiatrists - License by Reciprocity (filed 4/3/2019), and replace it with 16.21.4 NMAC, Podiatrists - Expedited License by Reciprocity, adopted 12/19/2022 and effective 1/18/2023.

The New Mexico Board of Podiatry reviewed at its 12/16/2022 hearing, repealed its rule 16.21.6 NMAC - Licensure for Licensure for Military Service Members, Spouses and Veterans (filed 2/11/2014). The rule repeal was adopted 12/19/2022 and is effective 1/18/2023.

### **REGULATION AND LICENSING DEPARTMENT PODIATRY, BOARD OF**

#### **TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**

#### **CHAPTER 21 PODIATRISTS PART 4 EXPEDITED LICENSE BY RECIPROCITY**

##### **16.21.4.1 ISSUING**

**AGENCY:** Regulation and Licensing Department, Board of Podiatry.

[16.21.4.1 NMAC - Rp, 16.21.4.1 NMAC 1/18/2023]

**16.21.4.2 SCOPE:** The provisions in Part 4 of Chapter 21 apply to all applicants for expedited licensure by reciprocity.

[16.21.4.2 NMAC - Rp, 16.21.4.2 NMAC 1/18/2023]

##### **16.21.4.3 STATUTORY**

**AUTHORITY:** These rules are promulgated pursuant to the Podiatry Act, Sections 61-8-1 to 61-8-17 NMSA 1978.

[16.21.4.3 NMAC - Rp, 16.21.4.3 NMAC 1/18/2023]

**16.21.4.4 DURATION:**

Permanent.

[16.21.4.4 NMAC - Rp, 16.21.4.4 NMAC 1/18/2023]

**16.21.4.5 EFFECTIVE**

**DATE:** January 18, 2023, unless a later date is cited at the end of a section.

[16.21.4.5 NMAC - Rp, 16.21.4.5 NMAC 1/18/2023]

**16.21.4.6 OBJECTIVE:**

The objective of Part 4 is to promote, preserve and protect the public health, safety and welfare by regulating and setting professional standards for applicants for expedited licensure by reciprocity.

[16.21.4.6 NMAC - Rp, 16.21.4.6 NMAC 1/18/2023]

**16.21.4.7 DEFINITIONS:**

**A. "Eligible jurisdiction"** means:

(1) any state or territory of the United States except those included in the list of disapproved licensing jurisdictions in of 16.21.4.8 NMAC; and

(2) any foreign country included in 16.21.4.9 NMAC.

**B. "Expedited license by reciprocity"** means a provisional license that confers the same rights, privileges and responsibilities as a regular license issued by the board.

**C. "Good standing"** means a license or registration is active and not expired, suspended, revoked, surrendered, conditioned, or otherwise in a status that in any manner restricts the activity of a licensee or registrant under the authority of the license.

**D. "Jurisdiction"** has the same meaning as defined in Subsection F of Section 61-1-2 NMSA 1978.

**E. "Licensing Fee"** has the same meaning as defined in Paragraph (1) of Subsection E of Section 61-1-34 NMSA 1978.

**F. "Military service member"** has the same meaning as defined in Paragraph (2) of Subsection E of Section 61-1-34 NMSA 1978.

**G. "Qualified applicant"** means an applicant who:

(1) holds a current license in good standing in another jurisdiction, provided that an applicant who is not a military service member or veteran must hold a current license in good standing in an eligible jurisdiction;

(2) does not have a disqualifying criminal conviction, as defined in the board's rules; and

(3) is not subject to pending disciplinary action in New Mexico.

**H. "Veteran"** has the same meaning as defined in Paragraph (3) of Subsection E of 61-1-34 NMSA 1978.

[16.21.4.7 NMAC - Rp, 16.21.4.7 NMAC 1/18/2023]

**16.21.4.8 LIST OF DISAPPROVED LICENSING JURISDICTIONS; REASONS.**

Applicants licensed in the following states and territories of the United States shall not be eligible for expedited licensure by reciprocity under Section 61-8-9 NMSA 1978 of the Podiatry Act:

**A.** American Samoa, on the grounds that the board cannot determine the education or examination requirements in this jurisdiction;

**B.** Guam, on the grounds that this jurisdiction does not require licensees to pass any examination;

**C.** Kentucky and Pennsylvania, on the grounds that these jurisdictions do not require licensees to complete a residency program;

**D.** Minnesota, New Jersey, and Puerto Rico, on the grounds that these jurisdictions do not require licensees to pass Part III of the NBPME AMPLE exam considered by New Mexico to be an integral portion of the national examinations to determine competency to practice podiatry;

**E.** Montana, North Carolina and North Dakota, on the grounds that the boards cannot

determine sufficiency of residency requirements in these jurisdictions; and

**F.** Virgin Islands, on the grounds that the board cannot determine the examination requirements in this jurisdiction.

[16.21.4.8 NMAC - Rp, 16.21.4.8 NMAC, 1/18/2023]

**16.21.4.9 LIST OF APPROVED FOREIGN JURISDICTIONS.**

Applicants licensed in the following foreign countries outside of the United States may be eligible for expedited licensure under Section 61-8-9 NMSA 1978 of the Podiatry Act:

**A.** Spain; and

**B.** Canada.

[16.21.4.9 NMAC - Rp, 16.21.4.9 NMAC, 1/18/2023]

**16.21.4.10 EXPEDITED LICENSURE APPLICATION:**

**A.** A candidate for expedited licensure by reciprocity under Section 61-1-31.1 NMSA 1978 of the Uniform Licensing Act must submit to the board a complete application containing all the following:

(1) a completed and signed application form;

(2) proof of current licensure in an eligible jurisdiction as defined in these rules;

(3) certificate of good standing for the license held by the applicant in an eligible jurisdiction;

(4) official transcripts from the school of podiatric medicine or college, to be sent directly to the board office from the accredited program;

(5) certificate or letter from residence director verifying completion of residence program approved by the CPME;

(6) proof of active practice for the five consecutive years immediately preceding the date of application (such proof may include a letter from an accountant, the professional society, tax forms, or other documentation approved by the board);

(7) payment of the required application fee.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of, all of the materials required by 16.21.4.10 NMAC, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-8-11 NMSA 1978:

(1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

[16.21.4.10 NMAC - Rp, 16.21.4.10 NMAC, 1/18/2023]

#### **16.21.4.11 EXPEDITED LICENSURE APPLICATION FOR MILITARY SERVICE MEMBERS AND VETERANS:**

**A.** A candidate for expedited licensure by reciprocity under Section 61-1-34 NMSA 1978 must submit to the board a complete application containing all of the following:

(1) a completed and signed application form;

(2) proof of current license in another jurisdiction;

(3) certificate of good standing for the license held by the applicant in another jurisdiction, including a branch of the United States armed forces;

(4) submission of the following documentation:

(a) for military service member: a copy of military orders;

(b) for spouse of military service members: copy of military service member's military orders, and copy of marriage license;

(c) for spouses of deceased military service members: copy of decedent's DD 214 and copy of marriage license;

(d) for dependent children of military service members: a copy of military service member's orders listing dependent child, or a copy of military orders and one of the following: a copy of birth certificate, military service member's federal tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): proof of honorable discharge such as a copy of DD 214, DD 215, DD 256, DD 257, NGB Form 22, Military ID card, a driver's license or state ID card with a veterans designation, or other documentation as provided by a governmental entity verifying an honorable discharge.

**B.** An expedited license application shall not be deemed complete until the applicant has submitted, and the board's staff is in receipt of all of the materials required by 16.21.4.20 NMAC, including documentation from third parties.

**C.** Upon receipt of a complete application, the board's staff shall process the application and issue the expedited license to a qualified applicant within 30 days.

**D.** If the applicant has a disqualifying criminal conviction or the board may have other cause to deny the application pursuant to Section 61-8-11 NMSA 1978:

(1) the matter of the applicant's application shall be submitted to the board for consideration and action at its next available regular meeting;

(2) the license may not be issued within 30 days of submission of the complete application; and

(3) the board may vote to grant the application or refer the matter to its administrative prosecutor for denial of the application as provided by the board's rules.

**E.** A military service member or veteran who is issued an expedited license shall not be charged a licensing fee for the first three years of licensure with the board.

[16.21.4.11 NMAC - Rp, 16.21.4.11 NMAC, 1/18/2023]

#### **16.21.4.12 EXPEDITED LICENSE DURATION AND RENEWAL:**

**A.** An expedited license shall be valid for the same length of time as a regular license issued by the board and must be renewed on or before January 1 of each year, as provided by 16.21.7.8 and 16.21.7.9 NMAC.

**B.** A licensee holding an expedited license may apply for license renewal in the manner provided by the board's rules, provided that, upon renewal, if the licensee holding an expedited license was not required by the licensee's original jurisdiction outside of New Mexico to pass the NBPME examinations part 1, 2, and 3, the licensee shall be required to do so as a prerequisite to license renewal.

**C.** Upon renewal, the board shall issue a regular license to a licensee holding an expedited license issued pursuant to these rules.

[16.21.4.12 NMAC - N, 1/18/2023]

#### **HISTORY of 16.21.4 NMAC:**

##### **Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

Rule III, Licensure by Reciprocity, filed 7/21/1980;

Rule III, Licensure by Reciprocity, filed 8/18/1989.

##### **History of the Repealed Material:**

16 NMAC 21.4, Podiatry - Application for License by Reciprocity, repealed 10/15/2004.  
16.21.4 NMAC, Podiatrists - License by Reciprocity filed 9/15/2004, Repealed effective 5/3/2019.  
16.21.4 NMAC, Podiatrists - License by Reciprocity filed 4/3/2019, Repealed effective 1/18/2023.

#### Other History:

Rule III, Licensure by Reciprocity (filed 8/18/1989) was renumbered, reformatted and replaced by 16 NMAC 21.4, Podiatry - Application for License by Reciprocity, effective 7/1/1996.

16 NMAC 21.4, Podiatry - Application for License by Reciprocity (filed 6/17/1996) was replaced by 16.21.4 NMAC, License by Reciprocity, effective 10/15/2004.  
16.21.4 NMAC, Podiatrists - License by Reciprocity filed 9/15/2004 was replaced by 16.21.4 NMAC, Podiatrists License by Reciprocity effective 5/3/2019.

16.21.4 NMAC, Podiatrists - License by Reciprocity filed 4/3/2019, Replaced by 16.21.4 NMAC, Podiatrists - Expedited License by Reciprocity effective 1/18/2023.

### REGULATION AND LICENSING DEPARTMENT PODIATRY, BOARD OF

**This is an amendment to 16.21.2 NMAC, Sections 3 and 8 effective 1/18/2023.**

**16.21.2.3 STATUTORY AUTHORITY:** [~~This rule is promulgated pursuant to Section 61-8-10 NMSA 1978.~~] These rules are promulgated pursuant to the Podiatry Act, Sections 61-8-1 through 61-8-17 NMSA 1978.

[16.21.2.3 NMAC - N, 10/15/2004; A, 01/18/2023]

#### 16.21.2.8 FEES:

**A.** Application fee for licensure by examination is \$400.00.

**B.** Application fee for expedited licensure by reciprocity is \$600.00.

**C.** Duplicate license fee is \$25.00.

**D.** Temporary license fee is \$100.00.

**E.** Annual renewal fee is \$300.00.

**F.** Late fee for license renewal applications that are received but not complete, or not received or postmarked by December 31, is \$50 per month for each month or part thereof.

**G.** Reinstatement fee is \$200.00 for the first 12 months of delinquency and \$500.00 for a license that has lapsed more than one year but not more than three years.

**H.** Fees for requests for copies of public records will be charged reasonable administrative fees.

[16.21.2.8 NMAC - N, 10/15/2004; A, 7/15/2007; A, 01/18/2023]

### REGULATION AND LICENSING DEPARTMENT PODIATRY, BOARD OF

**This is an amendment to 16.21.7 NMAC, Sections 3, 8 and 9 effective 1/18/2023.**

**16.21.7.3 STATUTORY AUTHORITY:** [~~Podiatry Act, 61-8-10 NMSA 1978 and 61-8-10.1 NMSA 1978.~~] These rules are promulgated pursuant to the Podiatry Act, Sections 61-8-1 through 61-8-17 NMSA 1978.  
[16.21.7.3 NMAC - N, 10/15/2004, A, 1/18/2023]

**16.21.7.8 LICENSE EXPIRATION:** Podiatry licenses expire on January 1 of each year. Initial licenses, including expedited licenses, may be issued for a period greater than 12 months but less than 24 months, in order to align the license expiration date with the board's renewal cycle.

[16.21.7.8 NMAC - Rp, Rule VI.A, 10/15/2004, A, 1/18/2023]

**16.21.7.9 RENEWAL DEADLINE:** A completed renewal application accompanied by the

required fees, documentation of 16 hours of continuing education as defined in 16.21.8.13 NMAC and must be post-marked, received electronically, or hand delivered on or before January 1 of each year. ~~[Fourteen hours of CE is required for the renewal years before January 2, 2105. On or after January 2, 2015-~~ the] The CE requirement is 16 hours of CE, including 2 hours of pain management.

[16.21.7.9 NMAC - Rp, Rule VI.A, 10/15/2004; A, 7/29/2011; A, 11/1/2013; A, 1/18/2023]

### End of Adopted Rules



## Other Material Related to Administrative Law

**GOVERNOR,  
OFFICE OF THE  
EXECUTIVE ORDER 2023-001**

**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. As of January 5, 2023, the Centers for Disease Control and Prevention (“CDC”) reported over 100.6 million people have been infected in the United States, with over 1,088,000 related deaths, and the New Mexico Department of Health has reported 660,424 positive COVID-19 cases and 8,842 related deaths in New Mexico.

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 subsequently declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many have kept such states of emergency in place.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. The Governor has 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, Howie Morales, Lieutenant Governor of the State of New Mexico, and acting Governor pursuant to Article V, Section 7 of the New Mexico Constitution, by virtue of the authority vested in me by the Constitution and 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, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073,

2020-080, 2020-085, 2021-001, 2021-004, 2021-010, 2021-011, 2021-012, 2021-023, 2021-030, 2021-044, 2021-049, 2021-054, 2021-058, 2021-061, 2021-067, 2022-004, 2022-007, 2022-012, 2022-016, 2022-024, 2022-067, 2022-109, 2022-115, 2022-120, 2022-131, 2022-147, 2022-149, and 2022-165 shall be renewed and extended through February 3, 2023.

2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.

3. Unless previously rescinded, 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 as well as Executive Order 2020-020.

4. This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect immediately, and shall remain in effect until February 3, 2023, unless renewed, modified, or rescinded.

**ATTEST:  
DONE AT THE EXECUTIVE  
OFFICE THIS 6TH DAY OF  
JANUARY 2023**

/ S /  
**MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE  
GREATSEAL OF THE STATE  
OF NEW MEXICO**

/ S /  
**HOWIE MORALES  
LIEUTENANT GOVERNOR**

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

# 2023 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXIV, Issues 1-24

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

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. The New Mexico Register is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941