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New Mexico Register

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

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The New Mexico Register

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New Mexico Register

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July 31, 2023

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Notices of Rulemaking and Proposed Rules

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico Human Services Department (HSD) will hold a public hearing to allow public comment to adopt the Temporary Assistance for Needy Families (TANF) State Plan for FY2024 to FY2026. HSD is required by Federal Law to file a State Plan that describes how the Department will administer the State's TANF-funded cash assistance programs. The State Plan must be submitted every two years to the United States Department of Health and Human Services (DHHS) and Administration for Children and Families (ACF). The Department is required to offer a 45-day comment period for the TANF State Plan prior to submittal. The TANF State plan was combined with Workforce Innovation and Opportunity Act (WIOA).

A public hearing to receive testimony on the TANF State Plan will be held on October 6, 2023 from 11:00 am to 12:00 pm. The hearing will be held in a hybrid setting: in person you may attend at 1474 Rodeo Road, Santa Fe, NM 87505 in the Administrative Services Division (ASD) Large Conference Room-first floor or you may attend virtually through a GoTo Meeting at <https://meet.goto.com/779756645>. A phone number is provided for individuals who would like to participate by phone: United States: +1 (312) 757-3121, Access Code: 779-756-645.

The Human Services Register Vol. 46 No. 8 outlining the proposed regulations are available on the HSD's website <https://www.hsd.state.nm.us/lookingforinformation/income-support-division-registers-2/>.

Individuals wishing to testify or to request a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348,

Santa Fe, New Mexico 87504-2348, or by calling 505-819-8118.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, October 6, 2023. Please send comments to Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-709-5468 or through the New Mexico Relay system, at #711. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

You may send comments electronically to: HSD-isdrules@hsd.nm.gov

All written comments will be posted on the Human Services Department Website at <https://www.hsd.state.nm.us/lookingforinformation/income-support-division-registers-2/> within 3 days of receipt.

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE OF PROPOSED RULEMAKING

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to repeal and replace the New Mexico Administrative Code (NMAC) rule 8.308.12, Managed Care Program, Community Benefit. This amendment implements a change of approved cost limits for

Environmental Modifications and Community Transition Services, as well as adding additional language clarifying Electronic Visit Verification (EVV) requirements for respite services under the community benefit program.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: July 31, 2023

Hearing Date: August 30, 2023

Adoption Date: Proposed as December 1, 2023

Technical Citations: New Mexico Section 1115 Demonstration Waiver Amendment #2

The Department is proposing to amend the rule as follows:

Section 8.308.12.8 is updated to include the department's current mission statement.

Section 8.308.12.13.D.3 is updated to reflect the change in cost limits for Community Transition Services.

Section 8.308.12.13.G.5 is updated to reflect the change in cost limits for Environmental Modifications.

Section 8.308.12.13.L is updated to add additional language clarifying Electronic Visit Verification requirements for respite services.

Several changes have been made throughout the NMAC to align with formatting requirements.

The register for these proposed amendments to this rule will be available July 31, 2023 on the HSD web site at <https://www.hsd.state.nm.us/lookingforinformation/registers/> and <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/>

comment-period-open/. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

The Department proposes to implement this rule effective December 1, 2023. A public hearing to receive testimony on this proposed rule will be held **via conference call** on August 30, 2023, at 9:00 a.m., Mountain Time (MT). **Conference phone number: 1-800-747-5150.** **Access code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: HSD-madrules@state.nm.us. Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on August 30, 2023. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide

requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

NOTICE OF PERA RULEMAKING

The Public Employees Retirement Association (“PERA”) will consider changes to its rules promulgated under the Public Employees Retirement Act (“PERA Act”). Changes are proposed for the following rules:

1. Rule 2.80.1000 NMAC - “Disability Retirement Benefits”;
2. Rule 2.80.700 NMAC - “Normal Retirement”;
3. Rule 2.80.900 NMAC - “Pre-Retirement Survivor Pensions”;
4. Rule 2.83.700 NMAC - “Retirement”;
5. Rule 2.83.800 NMAC - “Survivor Pension”;
6. Rule 2.84.700 NMAC - “Retirement”; and,
7. Rule 2.84.800 NMAC - “Survivor Pension”

Rule 2.80.1000 NMAC would be amended to allow a Doctor of Osteopathic Medicine, a Certified Nurse Practitioner or Physician’s Assistant to complete an examining physician’s statement for disability retirement applicants and to allow more time for applicants to obtain additional medical records requested by the disability review committee.

Rules 2.80.700 NMAC, 2.80.900 NMAC, 2.83.700 NMAC, 2.83.800 NMAC, 2.84.700 NMAC, and 2.84.800 NMAC would be amended to allow members to name a supplemental needs trust as a survivor

beneficiary in response to the passage of House Bill 304 during the 2023 New Mexico legislative session and to ensure compliance with recent federal changes to the Internal Revenue Code which altered the age that a member of a qualified pension plan is required to take a distribution from their retirement. Each rule would be reformatted as necessary.

A formal rulemaking hearing will be held on September 12, 2023, at 9:00 a.m. in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico, 87507. The rulemaking hearing will also be accessible through Zoom. The Zoom access link will be published on PERA’s website listed below prior to the hearing. Oral comments will be taken at the public hearing. Final action on the rules will occur at the September 2023 meeting of the PERA Board which will be held in the Fabian Chavez Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico at a date and time specified in the Board’s Public Meeting Notice. The purpose of the rulemaking hearing is to obtain public input on the proposed amendment to the above-referenced rules. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments on the proposed rule changes.

The purpose of the proposed rules change to the disability rule is to maintain a rigorous review process for disability applicants while addressing the current issues with access to health care in New Mexico. The purpose of the proposed rule change to the retirement rule is to align the rule with the requirements of House Bill 304 and allow members to name a supplemental needs trust as a survivor beneficiary and to identify the documents required by PERA for the same. The purpose of the proposed rule change to the benefit payment rule is to ensure that PERA rules relating to required distributions comply with what is required under federal law for all qualified retirement plans.

The authority for the proposed rule changes is, Section 10-11-130, NMSA 1978 of the PERA Act and Rule 20.80.200.10 NMAC, which authorizes the adoption and promulgation of rules and regulations necessary to carry out the purposes of the PERA Act.

Copies of the draft rules are available in PERA's Office of General Counsel. Written comments, inquiries or requests for copies should be directed to Geraldine Garduno at PERA's Office of General Counsel, 33 Plaza La Prensa, Santa Fe, N.M., 87507, or geraldine.garduno@pera.nm.gov or 505-476-9351. Written comments should be submitted by the close of business on September 12, 2023. The full text of the proposed rule changes, as well as the Zoom access link for the public hearing, can be found here: <https://www.nmpera.org/about/rule-proposal/>.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Patricia Winter at 505-795-0712 or patriciab.winter@pera.nm.gov at least one week prior to the public hearing, or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Ms. Winter if a summary or other type of accessible format is needed.

**REGULATION
AND LICENSING
DEPARTMENT
CANNABIS CONTROL
DIVISION**

**NOTICE OF PROPOSED RULE
HEARING**

Public Hearing. The New Mexico Regulation and Licensing Department (RLD), Cannabis Control Division (CCD), will hold a public rule hearing on August 31, 2023, at 9:00am. The

rule hearing will be held at the Rio Grande Conference Room in the Toney Anaya State Office Building located at 2550 Cerrillos Road, Santa Fe, New Mexico. The hearing will be live-streamed via Internet-based video and via telephone for those wishing to observe the hearing. Individuals wishing to participate and offer comment on the proposed rules will appear in-person at the hearing location. A PDF of the proposed rule and meeting details may be accessed through the Cannabis Control Division website: <https://www.rld.nm.gov/cannabis/> or from Victoria Kaniatobe at the contact information listed below.

Purpose of Rule Hearing. The purpose of the public rule hearing is to receive public commentary regarding the proposals for amendments to rules related to licensing requirements and complaint procedures.

Any technical information used to inform the proposed rules will be accessible by visiting: <https://www.rld.nm.gov/cannabis/>.

Statutory Authority. Legal authority for this rulemaking may be found the Cannabis Regulation Act, Section 26-2C-1 through Section 26-2C-42 NMSA 1978 (2021). Additional authority may be found at Section 9-16-6 NMSA 1978 (2021).

Public Comment. The Division will begin accepting public comment on the proposed rules beginning July 31, 2023. Please submit written comments on the proposed rules to Robert Sachs, Division Counsel for the Cannabis Control Division, via electronic mail at ccd.publiccomment@state.nm.us. Written comment may also be submitted by visiting the Division website at <https://www.rld.nm.gov/cannabis/> or by mailing the comment to the following address:

Cannabis Control Division Public
Comment
c/o Robert Sachs

P.O. Box 25101
Santa Fe, NM 87504

All public comments must be received by the close of the public rule hearing on August 31, 2023. Persons will also be given the opportunity to present their comments at the rule hearing. Comments received prior to the rule hearing will be posted to the RLD website at: <https://www.rld.nm.gov/cannabis/>.

No later than July 31, 2023, interested parties may obtain and review copies of the proposed rules and public comments by going to the Cannabis Control Division website at <https://www.rld.nm.gov/cannabis/> or by contacting the Cannabis Control Division at RLD.CannabisControl@rld.nm.gov or (505) 476-4995.

Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing should contact Victoria Kaniatobe, Legal Clerk for the Cannabis Control Division at Victoria.Kaniatobe2@rld.nm.gov or (505) 476-4577 at least seven (7) days prior to the hearing.

Summary of Proposed Amended Rules.

16.8.2 NMAC: LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS
Part 2 provides the requirements necessary for issuance of a license under the Cannabis Regulation Act. Part 2 also governs the licensing and operational requirements for licenses. Amendments to this part will strike conditional licenses and variances to licenses. Additional amendments will change the requirements for the issuance and renewal of a license. Some of these changes include but are not limited to, adding that inspections will be required prior to the issuance of a license as well as requiring the completion of training courses prior to the issuance of a license.

**REGULATION
AND LICENSING
DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

NOTICE OF PUBLIC HEARING

The Construction Industries Commission will convene a public hearing for amendments to New Mexico Liquefied Petroleum Gas Standard, 19.15.40 NMAC. The hearing will be held before a hearing officer, at which time any interested person is invited to submit data, views or arguments on the proposed changes, either orally or in writing and to examine witnesses testifying at the hearing. The hearing is scheduled for September 8, 2023.

The purpose of this public rule hearing is to receive public comments regarding the amendments to New Mexico Liquefied Petroleum Gas Standard, 19.15.40 NMAC.

The statutory authority for this rulemaking is found in the Construction Industries Licensing Act, Subsection F of Section 60-13-9 NMSA 1978 and Liquefied Petroleum Gas Standard Act, Section 70-5-5 NMSA 1978.

Summary of the Proposed Changes to the Rule: Adoption of the 2021 national fuel gas code, referred to as NFPA 54; 2020 liquefied petroleum gas code, referred to as NFPA 58; and 2021 standard on recreational vehicles, referred to as NFPA 1192.

The hearing is scheduled as follows:

An in-person hearing shall be held on Friday, September 8, 2023, at the Toney Anaya Building, 2550 Cerrillos Road, Santa Fe, NM, second floor, Rio Grande Conference Room, starting at 9:30 a.m. The hearing will remain open until 10:00 a.m. or until participants have an opportunity to make public comment, whichever is longer.

Interested persons may obtain

copies of the proposed rule changes by logging onto the Construction Industries Division website (<https://www.rld.nm.gov/construction-industries>) to download the proposed rules or by written request to the Albuquerque CID Office – Regulation and Licensing Department, 5500 San Antonio Drive NE, Albuquerque, NM 87109, attention: Quindi Otero-Robertson.

You may send written comments to: Construction Industries Division, – Regulation and Licensing Department, 5500 San Antonio Drive NE, Albuquerque, NM 87109, Attention: Public Comments. Written comments may also be faxed to (505) 765-5670 or submitted to Quindi Otero-Robertson at her email address: Quindi.Otero@rld.nm.gov. All written comments must be received no later than 5:00 p.m., on Thursday, September 7, 2023. You may also review submitted comments by requesting copies from Quindi Otero-Robertson at her email address above. Public comments will be posted on the division’s website (<https://www.rld.nm.gov/construction-industries>). Written comments may also be received by the Commission at the in-person hearing until the hearing is closed. All public comment received shall be admitted into the record during the public hearing.

If you require special accommodations to attend the hearing, please notify CID by phone, email, or fax, of such needs as soon as possible to ensure adequate accommodations. Telephone: (505) 629-3835. Email: eliza.casados@rld.nm.gov; Fax No. (505) 765-5670.

**REGULATION
AND LICENSING
DEPARTMENT
HOME INSPECTORS BOARD**

**NOTICE OF PUBLIC RULE
HEARING AND BOARD
MEETING**

The Regulation and Licensing Department (Department) in consultation with the New Mexico Home Inspectors Board (Board), and pursuant to Board authority at Section 61-24D-3(F) NMSA 1978, will hold a rule hearing on Monday, September 11, 2023, at 9:00 a.m., to include a Special meeting of the Board to discuss and consider adoption of the proposed rules listed below. The rule hearing and subsequent Board meeting will be held at the Regulation and Licensing Department, 5500 San Antonio Drive NE, Albuquerque, NM 87109.

The hearing and subsequent board meeting may also be accessed via Cisco Webex Meetings by using the following link: <https://nmrld.webex.com/nmrld/j.php?MTID=m45ea6c4adee4b6445c0b7de9f724396f>

Join by meeting number

Meeting number (access code): 2488 161 7481

Meeting password: WjMkdGWk779 (95653495 from video systems)

Join from a video system or application

Dial 24881617481@nmrld.webex.com

You can also dial 173.243.2.68 and enter your meeting number.

The purpose of the rule hearing is to receive public comments related to proposed amendments of the following rules that address changes to Board rules:

1. Title 16 Chapter 66
Part 1- General Provisions

a. 16.66.1.7

Definitions

2. Title 16 Chapter 66
Part 2 – Fees

a. 16.66.2.8

Fees

3. Title 16 Chapter 66
Part 3 – Applications and Licenses

a. 16.66.3.8

Application for Licensure by Training and Examination

b. 16.66.3.9

Application for Licensure by Experience and Examination

c.	16.66.3.10	Application for Licensure by Credentials
d.	16.66.3.11	Examinations
e.	16.66.3.12	Expedited Licensure for Military Service Members Spouses, Children and Veterans
f.	16.66.3.13	Initial License Length (Rules in Effect Until December 31, 2021)
g.	16.66.3.14	Licensure Procedure
h.	16.66.3.15	Criminal Convictions
4.	Title 16 Chapter 66 Part 4 – License Renewals and Reactivation	
a.	16.66.4.8	License Renewal
b.	16.66.4.10	Reactivation of Expired or Inactive Licenses
5.	Title 16 Chapter 66 Part 5 – Continuing Education	
a.	16.66.5.8	Continuing Education
b.	16.66.5.10	Continuing Education Audits
6.	Title 16 Chapter 66 Part 8 – Disciplinary Proceedings	
a.	16.66.8.8	Grounds for Disciplinary Action
b.	16.66.8.9	Complaints and Responses
c.	16.66.8.10	Review of Complaint

On July 31, 2023 copies of the proposed rules may be obtained by going to the Boards and Commissions Division, Home Inspectors Board website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/home-inspectors/board-information/>, or by contacting the Board Administrator for the Board, Roxanne Romo, at (505) 222-9820.

The Department and the Board will begin accepting public comments on the proposed rules beginning July 31, 2023. Please submit written comments on the proposed changes to Roxanne Romo, Board Administrator, via electronic mail at: home.

inspectors@rld.nm.gov , or by regular mail at 5500 San Antonio Drive NE, Albuquerque, NM 87109 no later than September 11, 2023 8:00 a.m.

Written comments received during the public comment period will be posted to the Board’s website page linked above. Any person in attendance will be given the opportunity to present their comments at the rule hearing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing or the special board meeting, please contact Ms. Roxanne Romo, Board Administrator (505) 222-9820 at least 7 days prior to the rule hearing and special board meeting. Public documents, including the proposed rules, meeting agenda and minutes, can be provided in various accessible formats.

Purpose of Proposed Rules:

The above proposed rules by the Board at 16.66.1 through 16.66.5 NMAC govern the application requirements and process for licensure and licensure renewal and establish the requirements for reactivation of licensure for individual applicants and licensees. The proposed rules intend to create consistency between the Board’s rules and recent legislative amendments to the Home Inspector Licensing Act, improve Board efficiency, and improve the functioning of the profession for the benefit of the public.

The above proposed rules by the Board at 16.66.8 NMAC govern disciplinary proceedings against licensees.

Summary of Proposed Changes:

The proposed amendments to the rules previously promulgated by the Board at 16.66.1 through 16.66.5 and at 16.66.8 NMAC would (1) amend the requirements for board examination and licensure to comport

with recent legislative amendments, (2) define and incorporate “ancillary services” “pre-inspection agreements” and “business relationship,” (3) repeal state of emergency provisions, (4) amend the continuing education provisions to require minimum Board meeting attendance, (5) mandate exclusive three-year license periods, (6) amend the grounds for discipline to include failure to comply with continuing education requirements or the Board’s code of ethics, and (7) require satisfactory evidence of E&O insurance as a condition of renewal.

REGULATION AND LICENSING DEPARTMENT REAL ESTATE APPRAISERS BOARD

NOTICE OF PUBLIC RULE HEARING AND BOARD MEETING

The Regulation and Licensing Department (Department) in consultation with the New Mexico Real Estate Appraiser Board (Board) will hold a rule hearing on Thursday, August 31, 2023 at 9:00 a.m. pursuant to Subsection A of Section 61-30-7, NMSA 1978, immediately followed by a Special meeting of the Board to discuss and consider adoption of the proposed rules listed below. The rule hearing and subsequent Board meeting will be held at the Regulation and Licensing Department, 5500 San Antonio Drive NE, Albuquerque, NM 87109.

The hearing and subsequent board meeting may also be accessed via Cisco Webex Meetings by using the following link:

<https://nmrld.webex.com/nmrld/j.php?MTID=m4f611ffbd19a65dfce93e52dc2bd2c98>
 Meeting Number: 2496 715 9640;
 Meeting password: vmWUPXkM639
 Join by Phone: 1+ (415) 655-0002

The purpose of the rule hearing is to receive public comments related to proposed amendments, repeal, and/or replacement of the following rules that address changes to:

16.62.1 NMAC - General Provisions

16.62.2 NMAC – Application for Trainee

16.62.3 NMAC – Application for Licensed Residential

16.62.4 NMAC – Application for Residential Certificate

16.62.5 NMAC – Application for General Certificate

16.62.6 NMAC - Examinations

16.62.7 NMAC – Issuance/ Renewal of Apprentice Registration/Licenses/Certificates

16.62.8 NMAC – Educational Programs/Continuing Education

16.62.9 NMAC – Certificate of Good Standing

16.62.10 NMAC – Temporary Practice

16.62.11 NMAC – Application for Reciprocity

16.62.12 NMAC – Fees

16.62.13 NMAC – Disciplinary Proceedings

16.62.15 NMAC – Retirement and Reinstatement

16.62.16 NMAC – Advertising

16.62.17 NMAC – Unlicensed Practice/Penalties

16.65.2 NMAC – Registration Requirements

16.65.3 NMAC - Application for Registration

16.65.4 NMAC - Discipline

16.65.5 NMAC - Fees

On July 31, 2023 copies of the proposed rules may be obtained by going to the Boards and Commissions Division, Real Estate Appraiser Board website at: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/real-estate-appraisers/statutes-rules-and-rule-hearings/> or by contacting the Board Administrator for the Board at (505) 222-9882.

The Department and the Board will begin accepting public comments on the proposed rules beginning July

31, 2023. Please submit written comments on the proposed changes to Sarah McGeath, Board Administrator, via electronic mail at: NM.REAB@rld.nm.gov, or by regular mail at 5500 San Antonio Drive NE, Albuquerque, NM 87109 no later than August 31, 2023 8 a.m.

Written comments received during the public comment period will be posted to the Board's website page linked above. Any person in attendance will be given the opportunity to present their comments at the rule hearing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing or the special board meeting, please contact Sarah McGeath, Board Administrator (505) 222-9882 at least 7 days prior to the rule hearing and special board meeting. Public documents, including the proposed rules, meeting agenda and minutes, can be provided in various accessible formats.

Statutory Authority: Subsection A of Section 61-30-7, NMSA 1978

Purpose of Proposed Rules:

The above proposed rules by the Real Estate Appraisers' Board at 16.62.1 through 16.62.17 NMAC govern the application requirements and process for licensure and training, establish the continuing education requirements for licensees, and define an ethics rule for licensees, and establish the requirements for reinstatement of licensure for individual applicants and licensees.

The above proposed rules by the Real Estate Appraisers' Board at 16.65.1 through 16.65.5 NMAC govern the application requirements and process for registration for Real Estate Appraisal Management Companies.

Summary of Proposed Changes:

The proposed amendments to the rules previously promulgated by

the Real Estate Appraisers' Board at 16.62.1 through 16.62.17 NMAC would amend the experience and training requirements for board examination and licensure, amend the continuing education requirements for licensees, would add a criminal background check for applicants, amend the reinstatement requirements for licensees (16.62.7 NMAC only) and reciprocity requirements for applicants (16.62.11 NMAC only). The proposed amendments would also allow for online payment of fees by applicants and licensees. The proposed amendments also would amend the statement of statutory authority in each current rule.

The proposed amendments to the rules previously promulgated by the Real Estate Appraisers' Board at 16.65.1 through 16.65.5 NMAC would amend the application, registration, and fee requirements for Real Estate Appraisal Management Companies, and eliminate for such companies the costs of disciplinary proceedings.

TAXATION AND REVENUE DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

The New Mexico Taxation and Revenue Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to repeal rules regarding income taxes, gross receipts taxes, and certain credits that are associated with statutes that were repealed during the 2023 and 2018 legislative session as authorized by Section 9-11-6.2 NMSA 1978:

Summary of Proposed Changes:

The New Mexico Taxation and Revenue Department proposes to repeal the following rule(s):

Income Tax Act:

Section 7-2-18.4 NMSA 1978
- Qualified business facility

rehabilitation credit; income tax credit
(Repealed 07/01/2023)
3.3.13.11 NMAC - *Qualified Business Facility Rehabilitation Credit*

Corporate Income and Franchise Tax Act:

Section 7-2A-15 NMSA 1978
- Qualified business facility rehabilitation credit; income tax credit
(Repealed 07/01/2023)
3.4.14.10 NMAC - *Qualified Business Facility Rehabilitation Credit*

Gross Receipts and Compensating Tax Act:

Section 7-9-16 NMSA 1978 - Exemptions; gross receipts tax; certain nonprofit facilities (Repealed 07/01/2023)
Repeal of entire part - Title 3: Taxation, Chapter 2: Gross Receipts Tax, Part 104: Exemption - Gross Receipts Tax - Certain Nonprofit facilities
3.2.104.1 - *Issuing Agency*
3.2.104.2 - *Scope*
3.2.104.3 - *Statutory Authority*
3.2.104.4 - *Duration*
3.2.104.5 - *Effective Date*
3.2.104.6 - *Objective*
3.2.104.7 - *Definitions*
3.2.104.8 - *Nonprofit status to be determined by department*
3.2.104.9 - *Payments made by the health and environment department*
3.2.104.10 - *Sales by auxiliaries*

Section 7-9-44 NMSA 1978 (Repealed 2018), Suspension of the right to use a nontaxable transaction certificate (Repealed 03/02/2018)
Repeal of entire part - Title 3: Taxation, Chapter 2: Gross Receipts Tax; Part 202: Suspension of the right to use a nontaxable transaction certificate
3.2.202.1 - *Issuing Agency*
3.2.202.2 - *Scope*
3.2.202.3 - *Statutory Authority*
3.2.202.4 - *Duration*
3.2.202.5 - *Effective Date*
3.2.202.6 - *Objective*
3.2.202.7 - *Definitions*
3.2.202.8 - NMAC - *Suspension of right to issue nontaxable transaction certificates*

Other Tax Credits:

Section 7-9G-2 NMSA 1978 - Advanced Energy combined reporting tax credit; gross receipts tax; compensating tax; withholding tax (Repealed 07/01/2023)
Repeal of entire part - Title 3: Taxation, Chapter 13: Business Credits, Part 8: Other Tax Credits
3.13.8.1 NMAC - *Issuing Agency*
3.13.8.2 NMAC - *Scope*
3.13.8.3 NMAC - *Statutory Authority*
3.13.8.4 NMAC - *Duration*
3.13.8.5 NMAC - *Effective Date*
3.13.8.6 NMAC - *Objective*
3.13.8.7 NMAC - *Definitions: Advanced Energy Tax Credit Defined*
3.13.8.8 NMAC - *Value of Eligible Generation Plant Costs*
3.13.8.9 NMAC - *Eligible Generation Plant Cost Must be "Subject to Depreciation"*
3.13.8.10 NMAC - *Application of the credit*
3.13.8.11 NMAC - *Carryforward of unused credit*
3.13.8.13 NMAC - *Limitation on other credits*

Technical Information: No technical information was consulted in drafting these proposed rule changes.

Purpose of Proposed Rule: The proposed rules are being repealed because the statutes that they relate to have been repealed during the 2023 and 2018 legislative sessions.

Notice of Public Rule Hearing: A public hearing will be held on the proposed rule changes on Wednesday, August 30th, 2023, from 10 AM to 11 AM at the 3rd floor in the Montoya Building, 1100 South St. Francis Drive, Santa Fe, New Mexico 87504. The hearing will be recorded, and oral comments can be made during the public hearing. Written comments can be submitted as outlined at the end of this notice. Virtual meeting access also available using Zoom <https://us02web.zoom.us/j/84393332108?pwd=bUdtVHMwUzhlWGZWMHhVWnNaOUtUUT09> Meeting ID: 843 9333 2108 Passcode: 004369.

The rule proposals were placed on

file in the Office of the Secretary on July 17, 2023. Pursuant to Regulation 3.1.2.9 NMAC under Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about September 15, 2023.

Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Bobbie Marquez at BobbieJ.Marquez@tax.nm.gov. The Taxation and Revenue Department will make every effort to accommodate all reasonable requests but cannot guarantee accommodation of a request that is not received at least ten calendar days prior to the scheduled hearing.

Copies of the proposed rules may be found at <https://www.tax.newmexico.gov/all-nm-taxes/proposed-regulations-hearing-notices/> or are available upon request by contacting the Tax Policy Office at policy.office@tax.nm.gov.

Notice of Acceptance of Written Public Comment: Written comments on the proposals can be submitted by email to policy.office@tax.nm.gov or by mail to the Taxation and Revenue Department, Tax Information and Policy Office, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before 8 AM on Wednesday, August 30, 2023. All written comments received by the agency will be posted on <https://www.tax.newmexico.gov/all-nm-taxes/proposed-regulations-hearing-notices/> no more than 3 business days following receipt to allow for public review.

WORKFORCE SOLUTIONS, DEPARTMENT OF

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions ("Department" or "NMDWS") hereby gives notice

that the Department will conduct a public hearing to receive public comments regarding proposed amendments to NMAC 11.1.2 (the Public Works Minimum Wage Act Policy Manual) in the Leo Griego Auditorium located in the State Personnel Office (Willie Ortiz Building) at 2600 Cerrillos Road in Santa Fe, New Mexico, 87505 on September 6, 2023 from 10:00 am to 12:00 pm.

The purpose and summary of the public comment hearing will be to obtain input and public comment on proposed prevailing wage rates and subsistence and zone pay for Public Works projects for 2024.

Under Section 9-26-4, NMSA 1978, the Workforce Solutions Department is responsible for the administration of the labor relations division which oversees setting the prevailing wage and fringe benefit rates. Pursuant to Section 13-4-11, NMSA 1978, the Director of the Labor Relations Division shall determine the prevailing wage rates and the prevailing fringe benefit rates and the Director shall issue rules necessary to administer and accomplish the purposes of the Public Works Minimum Wage Act.

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Written comments must be received no later than 5 p.m. on September 5, 2023. However, the submission of written comments as soon as possible is encouraged.

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

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

WORKFORCE SOLUTIONS, DEPARTMENT OF

NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing to receive comments regarding proposed amendments to NMAC 9.1.1 (Administrative Procedures for the Human Rights Bureau) at the Leo Griego Auditorium located in the State Personnel Office (Willie Ortiz Building) at 2600 Cerrillos Road in Santa Fe, New Mexico, 87505 on September 6, 2023 from 1:00 pm to 3:00 pm.

Summary: The proposed amendment updates language to conform with the 2023 legislative changes in the Human Rights Act to include removing gender specific language and the term “handicap”. The amendment also proposes procedural changes to the complaint process and the administrative hearing process to include adding clarifications to due dates, methods of correspondence, and electronic communications.

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

Interested individuals are encouraged to submit written comments to the New Mexico Department of Workforce Solutions, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman prior to the hearing for consideration. Alternatively, written comments may be submitted

via email to andrea.christman@dws.nm.gov. Comments must be received no later than 5 p.m. on September 5, 2023.

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

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

End of Notices of Rulemaking and Proposed Rules

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 7/06/2023, the Public Education Department agreed to repeal 6.19.7 NMAC, Demonstration of Competency for High School Graduation, filed 7/24/2018, and replace it with 6.19.7 NMAC, Demonstration of Competency for High School Graduation, to be adopted 7/20/2023 and effective on 7/31/2023.

At a public hearing on 6/21/2023, the Public Education Department agreed to repeal 6.63.8 NMAC, Licensure in Athletic Coaching, 7-12, filed 6/15/1998, and replace it with 6.63.8 NMAC, Licensure in Athletic Coaching, 7-12, adopted 7/20/2023 and effective on 07/31/2023.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 2 PUBLIC EDUCATION DEPARTMENT - COMMISSIONS AND ADVISORY BOARDS
PART 9 PUBLIC EDUCATION COMMISSION STATE CHARTER SCHOOL PROCEDURES**

6.2.9.1 ISSUING AGENCY: New Mexico Public Education Department, hereinafter the department.
[6.2.9.1 NMAC - N, 7/31/2023]

6.2.9.2 SCOPE: The rule shall apply to all procedures, forms, and protocols of the public education commission in relation to state-chartered charter schools.
[6.2.9.2 NMAC - N, 7/31/2023]

6.2.9.3 STATUTORY AUTHORITY: This rule is being promulgated pursuant to Sections 9-24-8, 22-2-1, 22-2-2, and 22-8B-5.3 NMSA 1978.
[6.2.9.3 NMAC - N, 7/31/2023]

6.2.9.4 DURATION: Permanent.
[6.2.9.4 NMAC - N, 7/31/2023]

6.2.9.5 EFFECTIVE DATE: July 31, 2023, unless a later date is cited in the history note at the end of a section.
[6.2.9.5 NMAC - N, 7/31/2023]

6.2.9.6 OBJECTIVE: The department promulgates this rule acted upon by the public education commission for its procedures, forms, and protocols in relation to state-chartered charter schools.
[6.2.9.6 NMAC - N, 7/31/2023]

6.2.9.7 DEFINITIONS:
A. "Act" means the Charter Schools Act Sections 22-8B-1 through 22-8B-17.1 NMSA 1978, as may be amended.

B. "Annual report notice" means any of the following notices, or combination thereof, issued by the commission that may result from a review of the annual report:

- (1) Notice of exemplary performance;
- (2) Notice of satisfactory performance;
- (3) Notice of unsatisfactory performance;
- (4) Notice of uncorrected unsatisfactory performance; or
- (5) Notice of action to be initiated under the intervention ladder.

C. "Applicant" means one or more teachers, parents, or community members or a public postsecondary educational institution or nonprofit organization who submits an initial or renewal application to a chartering authority.

D. "Commission" means the public education commission.

E. "Condition" means a requirement imposed by the commission on a state charter school as part of the approval of a new school application or renewal application that is appealable to the secretary, and, if not appealed or not overturned on appeal, becomes a material term of the charter contract.

F. "Corrective action plan" consistent with Subsection F of Section 22-8B-12 NMSA 1978 means a plan proposed by a state charter school and approved by the commission to correct identified uncorrected unsatisfactory performance as contemplated by the intervention ladder.

G. "Days" means, unless otherwise specified in a provision in this rule or applicable statute, business days when the period referenced is 10 days or less, and calendar days when the period referenced is 11 days or more. In computing the number of days, exclude the day of the event that triggers the period, and include the last day of the period. If the last day is a day when the department is closed, the period continues to run until the end of the next business day that the department is not closed. Whenever a person or entity acts under this rule within a prescribed period after service of a notice or paper upon the person or entity, and the notice or paper is served by mail or courier service, three calendar days are added to the prescribed period.

H. “Department”

means the New Mexico Public Education Department.

I. “Division” means the charter schools division of the department statutorily required pursuant to Section 22-8B-17 NMSA 1978 to provide staff support to the commission, make recommendations to the commission regarding the approval, denial, or revocation of the charter of a state charter school, review and approve state charter school budget matters, and provide technical support to all charter schools.

J. “Final annual report” means the annual report presented by the division that is accepted by the commission at a public meeting which contains the final findings of the division regarding the performance of the state charter school, recommendation for commission action, and any unresolved response from the state charter school to the division’s phase 2 annual report.

K. “Final annual report completed in part” means a final annual report completed as to certain sections only when data necessary to complete other sections are delayed, and which indicates which sections of the annual report are being completed and which are being reserved.

L. “Good standing” means a designation for a state charter school indicating that the state charter school does not have action pending under the intervention ladder or a current annual report notice that identifies uncorrected unsatisfactory performance.

M. “Governing body” means the governing structure of a charter school as set forth in the charter school’s charter.

N. “Head administrator” means the duly licensed school administrator who is the director of the charter school and the person with duties similar to those of a superintendent.

O. “High stakes decision” means action of the commission that results in approval

of a new charter application, approval of a new charter application with conditions or denial of a new charter school’s application, a state charter school’s renewal, renewal with conditions, non-renewal, or revocation. High stakes decisions are governed by law, rule, and the charter school contract.

P. “Intervention concern” means unsatisfactory performance or a contract violation that may cause the division to recommend or the commission to begin an action under the intervention ladder.

Q. “Intervention ladder” means procedures adopted by the commission to impose interventions intended to address a state charter school’s unsatisfactory performance or non-compliance with the contract.

R. “Notice of possible non-renewal” means a written notice provided by the commission to a state charter school during the final two years of the charter contract term stating that there is sufficient uncorrected unsatisfactory performance, serious unsatisfactory performance, or contract violations by the state charter school to put the state charter school on notice that it may not be renewed for another charter term.

S. “Notice of possible renewal with conditions” means a notice issued by the commission to a state charter school during the final two years of the charter term stating that there is sufficient uncorrected unsatisfactory performance, serious unsatisfactory performance, or contract violations by the state charter school to put the state charter school on notice that it may be renewed for another charter term with a condition placed on the state charter school to correct the unsatisfactory performance in the new charter term.

T. “Notice of uncorrected unsatisfactory performance” means a notice by the commission, issued after acceptance of a final annual report, to a state charter school that unsatisfactory performance by the state charter

school has not been corrected by the date set forth in the notice to correct unsatisfactory performance, that unsatisfactory performance is identified as unsatisfactory performance in two consecutive annual reports, or that any specific indicator in the performance framework has been rated as “does not meet” for two or more years during the charter term including the current year assessed.

U. “Notice of unsatisfactory performance” means a notice issued by the commission to a state charter school that the division has identified unsatisfactory performance by the state charter school in the assessment of the performance framework.

V. “Performance framework” means the performance provisions incorporated as a material term to the charter contract between the school and the commission negotiated using a commission-approved framework that:

(1) is approved by the commission following the protocols in 6.2.9.8 NMAC through 6.2.9.10 NMAC;

(2) clearly sets forth the academic, organizational, or financial performance indicators and performance targets that will guide the commission’s evaluation of each charter school; and

(3) contains all elements required by Section 22-8B-9.1 NMSA 1978 as amended.

W. “Phase 1 annual report” means a draft annual report prepared by the division for each state charter school following the annual site visit that begins the documentation process of the state charter school’s performance of or compliance with (1) the charter contract terms, including any conditions, (2) the performance framework, and (3) outstanding corrective action plans or as issued by an agency with jurisdiction, if any, and reports or information on previously identified unsatisfactory performance all of which is uploaded to a data platform accessible by the state charter school to be updated

as more information is received by the division or provided by the state charter school.

X. “Phase 2 annual report” means the annual report document subsequent to the phase 1 annual report that is finalized by the division from the phase 1 annual report and provided to the state charter school for comment prior to submission to the commission as final report or a final report completed in part.

Y. “Procedure” or “Procedures” means directives, instructions, templates and forms, and timelines adopted by commission that are consistent with the act and the state charter schools’ contracts, and which are implemented by the division or commission pursuant to which the commission provides state charter school oversight, including:

- (1) new charter school applications;
- (2) evaluation criteria for new charter applications adopted by the commission to be applied by the division prior to making a recommendation;
- (3) implementation year checklist;
- (4) form of annual report;
- (5) form for commission acceptance of annual reports and notification to a state charter school of an annual report notice;
- (6) renewing charter school applications;
- (7) evaluation criteria for renewal charter applications adopted by the commission and applied by division prior to making a recommendation and description of the assessment of the application by the division;
- (8) charter school contract and performance framework templates consistent with the requirements of the act;
- (9) amendment and notification forms and procedures as referenced in the charter contract;
- (10) closure protocols for state charter schools;

(11)

consultation process to obtain input from state charter schools on procedures; and

(12)

such other forms and procedures adopted by the commission that are administrative in nature and that facilitate the commission’s implementation of the commission’s legal duties as defined by the act and applicable regulations.

Z. “Secretary” means the New Mexico secretary of public education.

AA. “State charter school” means a charter school authorized by the commission to operate as a public school.

AB. “Technical support” means guidance which may be provided by the division relating to its authority under the act.

AC. “Uncorrected unsatisfactory performance” means failure to correct unsatisfactory performance for which a state charter school has been given notice and opportunity to correct as reflected in two or more consecutive final annual reports accepted during the charter contract term.

AD. “Unsatisfactory performance” means a designation by the division in the final annual report or final annual report completed in part that is neither “exceeds” nor “meets” the standard. [6.2.9.7 NMAC - N, 7/31/2023]

6.2.9.8 SCHEDULE FOR STATE CHARTER SCHOOL PROCEDURE-MAKING:

A. In support of high-stakes decisions made by the commission, the commission shall create procedures related to its ministerial responsibilities of oversight and monitoring state charter schools that will be used by the commission and division consistent with their authority under the act. The commission’s procedures may be modified following the procedures adopted in this rule. The commission shall post all procedures in a central location on the commission’s website or in an authorizing manual available to the public on the commission’s website.

B. In adopting changes to procedures, the commission shall:

- (1) provide public notice to those who request notice of commission action that procedure changes are being considered by the commission pursuant to this rule;
- (2) provide written notice on commission meeting agendas of the two working sessions at which the commission will review each draft procedure and accept written and oral comments;
- (3) accept public written comments up to the start of the second working session and in-person or virtual comments during the two working sessions;
- (4) provide written notice on a commission meeting agenda indicating when the commission will consider adoption of each procedure; and
- (5) post the adopted forms and procedures on the commission website where all procedures are located.

[6.2.9.8 NMAC - N, 7/31/2023]

6.2.9.9 PROCEDURE REVIEW:

A. The procedures of the commission are effective until amended or repealed; will only be revised as determined by the commission to be necessary, in a manner consistent with national best practices and conforming to legislative changes; will follow the schedule set forth here and are applicable prospectively.

B. Any new or revised commission procedures shall be effective as of July 1 of the following fiscal year unless the commission identifies an exceptional circumstance requiring an immediate change or implementation. If a new or revised renewal application form is approved effective as of July 1, it will be used by schools that are scheduled to submit a renewal application fourteen months or later from the effective date. Schools that will be submitting a renewal application the next September, or two months from the effective date of the new or

revised renewal application form, will use the form that was in effect prior to July 1 unless otherwise agreed to between the renewing schools and the commission.

C. A new procedure or revisions to an existing procedure may be proposed by a member of the commission, or the division director on behalf of the division or another division of the department. All procedure revisions contemplated by this section shall comply with the notice and comment procedures as set forth in 6.2.9.8 NMAC.

D. This section does not apply to changes in scheduling dates, inclusion of legislative changes or the inclusion of minor changes that do not change the required provisions of the existing procedure such as corrective typographical errors or providing clarification. Such changes may be adopted by the commission at its discretion, with reasonable notice to those affected by the change(s) and posted to the website as set forth in 6.2.9.8 NMAC.

[6.2.9.9 NMAC - N, 7/31/2023]

6.2.9.10 OUT-OF-CYCLE PROCEDURE-MAKING; EXCEPTIONAL CIRCUMSTANCES:

Exceptional circumstances for implementing a procedure immediately, or with an effective date other than those described in 6.2.9.9 NMAC shall be found when needed to:

A. protect the immediate health, welfare, or education of state charter school employees, students and others doing business at state charter schools;

B. address new case law affecting the commission or state charter schools;

C. address statutory changes;

D. address changes to public education department rules; or

E. address other exceptional or emergency circumstances as determined by the commission.

[6.2.9.10 NMAC - N, 7/31/2023]

6.2.9.11 RECORD OF STATE CHARTER SCHOOL PERFORMANCE AND STATE CHARTER SCHOOL EVALUATION:

A. During the term of the charter contract, the state charter school, commission, and division will develop a record of the state charter school performance. This will include:

(1) the charter contract between the commission and the state charter school;

(2) all final annual reports prepared by the division and accepted by the commission;

(3) all annual report notices issued by the commission;

(4) documentation provided by the state charter school to the division and commission or identified by the division of corrected or uncorrected unsatisfactory performance identified in a previous final annual report or commission notice;

(5) documentation of actions taken by the commission under the intervention ladder and the results of the corrective action imposed, including a return to good standing by the commission, if provided;

(6) the state charter school's complete initial or renewal application to the commission;

(7) the division's written analysis of the initial or renewal application, the division's recommendation regarding approval or renewal of the application to the commission, and the response of the applicant for a new charter school or an existing renewing state charter school to the division's analysis and recommendation(s); and

(8) other documents, notices, or recommendations that are created pursuant to the processes set forth in this rule and provided by the commission or division to the state charter school regarding school performance.

B. The record as established under this section shall not be deemed the complete record for purposes of appeal by a renewing charter school pursuant to Section 22-8B-7 NMSA 1978.

[6.2.9.11 NMAC - N, 7/31/2023]

6.2.9.12 ANNUAL SITE VISIT AND ANNUAL REPORT:

A. The division will conduct an annual site visit to provide technical assistance to the state charter school, and to evaluate the school's annual progress toward the performance framework goals and compliance with the charter contract. The division will prioritize completing the annual site visits and presentation of final annual reports for those state charter schools that have submitted a renewal application and those state charter schools that have an unresolved annual report notice showing unsatisfactory performance or a corrective action plan in place.

B. The division's site visit will include review of whether the state charter school is:

(1) complying with the terms of the charter contract, including any conditions;

(2) meeting the indicators and targets as set forth in the performance framework;

(3) correcting or has corrected unsatisfactory performance;

(4) correcting or has corrected uncorrected unsatisfactory performance identified in an annual report notice; and

(5) completing or has completed actions that cure intervention imposed by the commission pursuant to 6.2.9.13 NMAC.

C. Phase 1, phase 2 and final annual reports will be completed by the division according to the following procedures and deadlines:

(1) The division and state charter school may extend or revise deadlines in the process for phase 1 by documenting an agreement as to a new deadline in writing. If the school does not offer

an appropriate deadline for purposes of providing the division with the missing information, the division director will impose a deadline with which the school shall comply.

(2) To create a phase 1 annual report, the division will include demographic and other information on the state charter school available to the division from the department and conduct an annual site visit.

(a) The division will provide at least 30 days prior written notice of each state charter school’s annual site visit and include a copy of, or a hyperlink to, the approved site visit protocol in the notice. Site visits will not be scheduled if a state charter school notifies the division that critical testing is scheduled for the date of the proposed site visit. If the division does not provide 30 days advance notice, the annual site visit will be rescheduled upon written request of the state charter school. If the annual site visit needs to be rescheduled for any reason, it may be rescheduled at any time after the initial 30-day period, and an additional 30-day notice is not required.

(b) The division and the state charter school will conduct an exit meeting at the end of the annual site visit outlining the initial results of the division’s findings. If the division determines that the state charter school did not provide information necessary for the division to complete its annual site visit evaluation, the parties will memorialize a list of missing information and the time frame for providing the information to the division during the exit meeting.

(c) Within 30 days following the exit meeting, the division will upload a phase 1 annual report based on the annual site visit findings to a data platform available for the state charter school to review at any time. The state charter school will provide missing information or correct the information to the division within the time frame agreed to by the division and the school.

(3) In order to complete the final annual report, the following actions will take place:

(a) No later than 45 days prior to a commission meeting to consider the final annual reports, the division will provide to the state charter school for review and comment a phase 2 annual report reflecting performance, including all information that has been made available. The division will identify in the phase 2 annual report unsatisfactory performance, uncorrected unsatisfactory performance, the facts in support of unsatisfactory performance, and the division’s recommendation to the commission. The phase 2 annual report shall contain the division’s initial assessment as to school’s performance according to the rating set forth in each completed section of the performance framework, and may contain the division’s recommendation to the commission regarding the commission’s annual report notice, including the specific type of notice that the division is recommending be issued, its factual basis for that recommendation, and the recommended time frame for completion of the corrective action.

(b) The state charter school may provide a written response to the division’s phase 2 annual report within 20 days of receipt from the division, including the state charter school’s response to the division’s assessment regarding correction of unsatisfactory performance if the state charter school received an annual report notice from the commission for the previous school year. The response shall include documents or other evidence to support the state charter school’s response.

(c) The division will consider the state charter school response and create a final annual report or a final annual report completed in part and include all unresolved state charter school’s responses, if any, to the phase 2 annual report. The division will provide the final annual report to the school and the commission seven

days prior to the commission meeting at which the final annual report or the final annual report completed in part will be considered by the commission. The division may move presentation of an annual report to the next meeting of the commission if it needs more time to consider changes proposed by a state charter school.

(d) The division will present its final annual report or the final annual report completed in part to the commission at a public meeting, and the state charter school may attend the commission meeting at which the final annual report will be discussed.

(4) If a final report has been completed in part, when the reserved sections can be completed, the annual report may be reopened and those reserved sections may be completed using the phase 2 process set forth above related to the reserved sections; however no sections other than those reserved may be reopened.

D. The commission shall take the following steps after consideration of the final annual report or final annual report completed in part.

(1) The commission will:

(a) accept the final annual report or final annual report completed in part at a public meeting of the commission;

(b) issue an annual report notice; or

(c) if circumstances exist to support revocation, take action to start a revocation process pursuant to this rule.

(2) If the commission votes to issue an annual report notice other than notice of exemplary or satisfactory performance, or to commence action under the intervention ladder when the division recommended the issuance of a notice of exemplary or satisfactory performance, the commission’s notice shall include a notice to the state charter school that it may, within 10 days of receipt of the notice, present a written response to the commission’s

action(s) to be included in the record of performance of the charter school. The state charter school may also request an opportunity to be heard at the next meeting of the commission and request reconsideration of the commission's decision to impose corrective action.

(3) Within 10 days after the commission meeting the commission shall provide a written notice to the school if the commission has accepted the final annual report or final annual report completed in part, identify the annual report notice issued by the commission, and reference the annual report which identifies the unsatisfactory performance requiring corrective action with sufficient specificity such that the state charter school can take appropriate measures to correct its performance.

(4) The final annual report or final annual report completed in part and the action of the commission shall be made part of the record of the state charter school performance. If a state charter school later corrects unsatisfactory performance, the final annual report or final annual report completed in part shall not be reopened and the rating changed; instead, the corrected unsatisfactory performance shall be noted in the final annual report for the next year or in the assessment of a renewal application, if the state charter school is submitting a renewal application that year.

(5) Any action to revoke or not renew a state charter school's charter contract will be in accordance with the state charter school's charter contract, and applicable laws and rules.

E. Acceptance of an annual report shall be by action taken by the commission at a public meeting that acknowledges receipt of an annual report from the division as part of the record of performance during the contract term.

[6.2.9.12 NMAC - N, 7/31/2023]

6.2.9.13 CORRECTIVE ACTION:

A. The following

actions are to be taken regarding the unsatisfactory performance by the state charter school or in response to an annual report notice.

(1) If the performance framework reflects unsatisfactory performance on one or more indicator, but the commission did not find that an annual report notice for unsatisfactory performance or uncorrected unsatisfactory performance was warranted, the state charter school shall take action to improve its performance on the specific indicators and shall provide information to the division of improvements made no later than the next annual site visit unless otherwise indicated by the commission in the notification provided for in Subsection D of 6.2.9.12 NMAC. The division will provide an assessment of the improvement during the next annual report cycle, or earlier if the division deems it necessary to recommend action under the intervention ladder.

(2) If an annual report notice for unsatisfactory performance or uncorrected unsatisfactory performance has been issued by the commission, the state charter school shall take action to correct unsatisfactory performance by providing information to the division of the corrected performance within the timeframe set in the commission's notice. The division will provide updates to the commission at intervals as set forth in the annual report notice, and report to the commission if the unsatisfactory performance has been corrected. The division may recommend that a notice of uncorrected unsatisfactory performance be issued on the next final annual report or recommend at any time that action be taken under the intervention ladder if there is a lack of progress by the state charter school as contemplated by the annual report notice.

(3) During the third or fourth year of the charter term, a governing body with renewal concerns based on unsatisfactory performance in the record of performance may request an informal pre-renewal review meeting. If

the request is made, a group of the governing body for the state charter school making up less than a quorum of the governing body, staff from the state charter school, the division, and a group of commissioners making up less than a quorum of the commission identified by the executive committee of the commission will meet to provide input to the state charter school on suggested areas of improvement before submitting the renewal application. The meetings and discussions will be considered technical assistance and will not be made part of the record of performance.

B. Throughout the term of the charter contract, the commission may take action when appropriate under the intervention ladder.

(1) If the division is the entity that identifies an intervention concern:

(a) the division will notify the school. Information establishing unsatisfactory performance giving rise to possible action under the intervention ladder may be obtained from sources such as other divisions and bureaus of the department or other state or federal agencies.

(b) unless the division finds that the unsatisfactory performance requires immediate action by the commission, the division will provide the state charter school with an opportunity to remedy the unsatisfactory performance without commission intervention under the intervention ladder.

(c) if the division determines that the intervention concern may require immediate intervention by the commission or that the state charter school has failed to remedy the intervention concern after notice from the division, the division will present information of the intervention concern to the commission at a public meeting.

(2) If the commission decides to issue a notice of intent to commence action under

intervention ladder, whether the intervention concern is presented by the division or the commission determines that it will commence action based on an intervention concern presented at a commission meeting, the commission will provide written notice to the state charter school's representatives of the date and time of the meeting at which the commission will consider whether to impose interventions pursuant to this section. The meeting shall be scheduled for the next regular meeting, no sooner than 10 days from the date of the commission's notice to the state charter school, except in exigent circumstances implicating health, safety, or financial impropriety, that could jeopardize the ongoing operations of the state charter school.

(3) At the commission meeting where it will consider commencing action under the intervention ladder, the division will present information supporting the position that commission intervention pursuant to this section is warranted. The state charter school may present written and oral rebuttal information to the commission prior to a commission decision to impose interventions.

(4) The commission may decide whether to impose appropriate interventions, after considering the information provided by the division and the state charter school.

(5) The commission may impose the following interventions related to an intervention concern:

(a) issue a notice of concern identifying the uncorrected unsatisfactory performance that includes expected outcomes and deadlines for addressing all issues and a deadline by which the school shall present the division with a corrective action plan to address the identified issues;

(b) issue a notice of breach of the state charter school's charter contract for a state charter school's failure to correct a notice of concern

according to its terms if said failure constitutes a breach of contract, or for violating any material terms of the contract that are serious enough to justify a heightened response by the commission. If the commission issues a notice of breach, the written notice of breach shall include the specific contract sections the commission alleges have been violated, the evidence upon which the commission contends a breach of the charter contract has occurred, and a deadline by which the school shall present the division with a corrective action plan to address the identified contract violations; or

(c) issue a notice of potential non-renewal or potential renewal with conditions, if the state charter school is in the last two years of its charter term and the commission finds that the facts warrant the issuance of the notice. The commission shall identify the legal basis for the possible nonrenewal or renewal with conditions, and shall include in its notice of possible non-renewal or renewal with conditions, a summary of the evidence supporting that conclusion; the required action by the state charter school to remedy the unsatisfactory performance giving rise to the notice of potential non-renewal or potential renewal with conditions; and the timeline for satisfying the requirements.

(6) Any corrective action plan required by this section shall be created and implemented as follows:

(a) The state charter school shall develop a corrective action plan by the date specified in the notice that addresses the identified intervention concern and that aligns with the expected outcomes and deadlines set forth in the notice and provide the document to the division for comments and suggested clarifications. The plan shall be due no sooner than 10 days from the state charter school's receipt of the notice of concern. An approved corrective action plan shall contain the following elements:

(i) name of state charter school representative responsible for ensuring completion of the corrective action plan and reporting to the division and commission;

(ii) specific actions to be taken by the state charter school and the staff positions anticipated to complete the actions to address the unsatisfactory performance; and

(iii) date(s) by which the state charter school is to submit report(s) to the commission and division on progress of or completion of the actions identified in the corrective action plan.

(b) The division, as part of its recommendation to the commission, will present its assessment of the adequacy of the plan and provide the division's plan to monitor the school's compliance. The division will create a corrective action monitoring tool to monitor and provide written progress reports periodically to the commission and state charter school and to be provided to the commission as part of the commission-approved corrective action plan.

(c) The commission, or a subcommittee of the commission if designated by the commission, shall consider the state charter school's proposed corrective action plan by a date specified in the notice of concern and, if the plan is found to be inadequate, may require the state charter school to improve the corrective action plan or take further action under the intervention ladder.

(d) The time for completing an accepted corrective action plan shall commence from the date the commission approves the plan.

(e) The state charter school may request amendment of the corrective action plan by providing notice to the division of the proposed changes. Non-substantive, minor changes to the commission-approved plan may be approved by the division in

writing. Substantive changes shall be approved by the commission at a public meeting.

C. Nothing herein shall preclude the commission from commencing revocation proceedings as set forth in 6.2.9.17 NMAC if ongoing monitoring activities reveal circumstances that warrant revocation.

D. The commission shall vote to reinstate a state charter school's good standing upon the division providing information that the state charter school has corrected the concerns that gave rise to a notice of concern or notice of breach. Reinstatement of the school's good standing shall be evidenced in writing, made a part of the record of performance for the state charter school, and the state charter school's corrective actions may be used to support renewal or renewal with conditions.

E. Action taken by the commission pursuant to this section shall be made part of the record of the state charter school performance. [6.2.9.13 NMAC - N, 7/31/2023]

6.2.9.14 TRIBAL CONSULTATION:

A. If a state charter school applicant wants to open a charter school on tribal land, it shall negotiate with and receive the tribal government's approval for the public school before the commission acts on the application. The applicant shall adhere to requirements for tribal consultation in Section 22-8B-12.2 NMSA 1978.

B. When the commission is contemplating closing a state charter school located on tribal land, for any reason, suspension, revocation, or non-renewal, it shall consult with tribal leaders and members and families of students attending the charter school, and shall adhere to the requirements of Section 22-8B-12.2 NMSA 1978.

[6.2.9.14 NMAC - N, 7/31/2023]

6.2.9.15 NEW SCHOOL APPLICATION REVIEW:

A. The division will analyze each new state charter

school application, consider information and analysis provided in accordance with the act, and prepare a preliminary renewal analysis. The preliminary renewal analysis may include the division's preliminary recommendation to the commission whether to approve, approve with conditions, or to not approve the school's charter contract in addition to other information as directed by the commission.

B. The applicant may provide a written response to the preliminary renewal analysis within 10 days of receipt of the analysis. If the division agrees with the applicant's response, the division will modify the final analysis before submitting it to the commission and provide an updated analysis to the applicant. If the division disagrees with the applicant's response in whole or in part, it will provide reasons why it disagrees with the applicant's response in its final analysis and include the applicant's response in the division's final analysis submitted to the commission.

C. No later than 30 days prior to the new application hearing, the commission shall identify in writing for each applicant preliminary issues of concerns or requests for further information to allow the applicant to prepare for the hearing.

D. The division will submit its final analysis as described in this section to the commission, seven days prior to the new application hearing.

E. The commission shall determine if an application is approved, approved with conditions, or not approved in accordance with law and this rule.

F. An applicant may appeal the decision to the secretary in accordance with Section 22-8B-7 NMSA 1978 and provisions of 6.80.4.13 NMAC.

[6.2.9.15 NMAC - N, 7/31/2023]

6.2.9.16 RENEWAL:

A. The division will analyze each renewal application according to the criteria established

by the commission and the act and will prepare a preliminary renewal analysis. The preliminary renewal analysis shall include the division's preliminary recommendation to the commission whether to renew, renew with conditions, or to not renew.

B. The school seeking to renew its charter as a state charter school may provide a written response to the preliminary renewal analysis within 10 days of receipt. If the division agrees with the school's response, the division will modify the final renewal analysis before submitting it to the commission and provide an updated analysis to the state charter school. If the division disagrees with the school's response in whole or in part, it will provide reasons why it disagrees with the school's response in its final renewal analysis and include the school's response in the division's final renewal analysis submitted to the commission.

C. No later than 30 days prior to the renewal hearing, for each renewing school seeking to renew its charter as a state charter school, the commission shall identify in writing preliminary issues of concern, an indication of possible non-renewal if identified by the commission, and request for further information to allow the school to prepare for the renewal hearing.

D. The division will submit its final renewal analysis as described in this section to the commission by no later than 10 days prior to the commission hearings on the renewal applications.

E. Unless a non-renewal hearing is requested as set forth below, for each renewing charter, the commission shall hold a renewal hearing according to an approved renewal process, allow public input, and allow oral presentations by the division and the school. The commission will then be allowed to ask questions of the division and the school related to the renewal application and oral presentations prior to making a decision regarding renewal.

F. If the division provides a recommendation of non-renewal, if the commission has indicated to the school that it may consider non-renewal, or if the record of performance contains sufficient grounds for non-renewal, the school may request to invoke the non-renewal hearing procedure described in Subsection G of this section. A state charter school's request for the commission to follow the non-renewal hearing procedure shall be provided to the commission chair and division director by no later than 10 days after issuance of the division's preliminary renewal analysis.

G. If the school seeking to renew its charter as a state charter school timely requests that the commission follow the non-renewal hearing procedure, the commission shall provide the school with the following minimum process before voting on the division's recommendation for nonrenewal.

(1) Upon receipt of the school's request for the commission to follow the non-renewal hearing procedure, the commission shall provide notice of the date and time of the possible non-renewal hearing no later than 10 days prior to the hearing, or indicate that the commission will utilize the same date and time set previously identified for a renewal hearing for the school. The full record of performance, renewal application, and analysis by the division will be considered as part of the record without further evidentiary foundation needed. Within five days, the chairperson of the commission, with counsel, shall meet with the parties and their counsel to confirm anticipated witnesses and documents to be presented, including how to address any new information that the parties may wish to present, and to memorialize the anticipated witnesses, documents, process and timelines as established in the meeting.

(2) If the commission has indicated to the school that it may consider non-renewal, the division or commission counsel may rely on the grounds

provided to the school in the record of performance, the reasons provided in the division's final renewal analysis that were previously disclosed to the school through the process contemplated under this rule, or in the written letter of concern from the commission provided to the school during the charter contract term.

(3) The non-renewal hearing shall be conducted as follows:

(a) If the commission has indicated to the school that it may consider non-renewal, the division will have one hour in total to present its recommendation and supporting evidence to the commission, which may be through its counsel or commission counsel. The presenting party may present witness testimony or documentary evidence, and shall have the opportunity to question the state charter school representatives in appearance, excluding legal counsel.

(b) The school, through counsel if it elects to have counsel, shall then have one hour in total to present evidence to defend its application for renewal. The school may present witness testimony or documentary evidence and shall have the opportunity to question division representatives or other representatives in appearance about information used to support a recommendation of nonrenewal.

(c) Commission members may ask questions of the division, its attorney or witnesses, and the school representatives and witnesses, during the presentations, which shall not be subtracted from the division's or school's time, and may take up to one hour after the school and division finish their presentations to ask additional questions that are related to the renewal applications and the previously identified reasons given for possible nonrenewal.

H. Attorneys may provide representation at the hearing, at each parties' sole cost and expense.

I. The hearing shall be recorded by a licensed stenographer and a copy of the transcript shall be

presented to the parties within 10 days of the hearing unless additional time can be extended without prejudice to the school's right to appeal.

J. The hearing and deliberations of the commission shall be conducted pursuant to the Open Meetings Act.

K. The commission shall vote on the state charter school's renewal in a public meeting and articulate the legal grounds and supporting evidence for its decision on the record. The commission shall serve a written decision on the state charter school's representatives within 14 days of the hearing. If the commission decides not to renew the charter contract, the decision shall include the legal basis for non-renewal and the factual reasons supporting findings of legal violations, required pursuant to Subsection K and Subsection M of Section 22-8B-12 NMSA 1978 during the public hearing.

L. A school may appeal to the secretary pursuant to Section 22-8B-7 NMSA 1978 and provisions of 6.80.4.13 NMAC. [6.2.9.16 NMAC - N, 7/31/2023]

6.2.9.17 REVOCATION:

A. The commission may revoke the school's charter contract if legal grounds exist pursuant to the act. If immediate revocation is warranted, or if the state charter school does not provide a corrective action plan accepted by commission, or if the state charter school fails to timely cure the violation as contemplated in the corrective action plan, the commission may vote to proceed with revocation.

B. The commission shall provide the school with a notice of intent to revoke that includes the legal basis for revocation as contemplated in the act and a date, time, and place for a revocation hearing. The hearing shall be in Santa Fe or the county in which the school is located, as agreed upon between the parties. Unless a need for emergency revocation or suspension is identified, the hearing shall be held not more

than 60 nor less than 30 days from the date of service of said notice. The full record of performance, including any transcripts or commission meetings relating to discussion of unsatisfactory performance, will be considered as part of the record without further evidentiary foundation needed. Within five days, the chairperson of the commission, with counsel, will meet with the parties and counsel to confirm anticipated witnesses and documents to be presented, including how to address any new information that the parties may wish to present, and memorialize the anticipated witnesses, documents, process, and timelines as established in the meeting.

C. The revocation hearing shall be conducted as follows:

(1) Counsel presenting the case for revocation shall have one hour to present evidence for revocation to the commission. The counsel presenting the case for revocation may present witness testimony or documentary evidence, and may question the school representatives in appearance, excluding legal counsel.

(2) After the commission's counsel's presentation, the school shall have one hour to present evidence to defend against the recommended revocation. The school may present witness testimony or documentary evidence, and may present witness testimony or documentary evidence, and may question the division representative in appearance or other representatives in appearance to defend against the revocation.

(3) Commission members may ask questions of the division, the commission's counsel or witnesses, the school, its attorney, and the school's witnesses during the presentations and may take up to one hour after the commission's counsel and the state charter school's presentations to ask additional questions related to grounds for revocation.

D. Attorneys may provide representation at the hearing, at each parties' sole cost and expense.

E. The hearing shall be recorded by a licensed stenographer and a copy of the transcript shall be presented to the parties within 10 days of the hearing unless additional time can be extended without prejudice to the school's right to appeal.

F. The hearing and deliberations of the commission shall be conducted pursuant to the Open Meetings Act.

G. The commission shall vote on the state charter school's revocation in a public meeting and articulate the legal grounds and supporting evidence for its decision on the record. The commission shall serve a written decision on the state charter school's representatives within 14 days of the hearing. If the commission decides to revoke the charter contract, the decision shall include the legal basis for revocation, and the factual reasons supporting findings of legal violations, required pursuant to Subsection K and Subsection M of Section 22-8B-12 NMSA 1978 during the public hearing.

H. Appeal. A school may appeal to the secretary pursuant to Section 22-8B-7 NMSA 1978 and provisions of 6.80.4.14 NMAC. [6.2.9.17 NMAC - N, 7/31/2023]

History of 6.2.9 NMAC:
[RESERVED]

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 19 PUBLIC SCHOOL ACCOUNTABILITY PART 7 DEMONSTRATION OF COMPETENCY FOR HIGH SCHOOL GRADUATION

**6.19.7.1 ISSUING
AGENCY:** Public Education
Department, herein after the
department.
[6.19.7.1 NMAC - Rp, 6.19.7.1
NMAC, 7/31/2023]

6.19.7.2 SCOPE: This rule shall apply to public schools, state educational institutions, and state agencies enrolling high school students, except for institutions of higher education and the New Mexico military institute. The rule shall apply beginning with the class of 2025. If any part or application of this rule is held invalid, the remainder of the rule or its application in other situations shall not be affected.
[6.19.7.2 NMAC – Rp, 6.19.7.2 NMAC, 7/31/2023]

**6.19.7.3 STATUTORY
AUTHORITY:** Sections 9-24-8, 22-2-1, 22-2-2, 22-2C-4.1, and 22-13-1.1 NMSA 1978.
[6.19.7.3 NMAC – Rp, 6.19.7.3 NMAC, 7/31/2023]

6.19.7.4 DURATION:
Permanent.
[6.19.7.4 NMAC - Rp, 6.19.7.4 NMAC, 7/31/2023]

**6.19.7.5 EFFECTIVE
DATE:** July 31, 2023, unless a later date is cited at the end of a section.
[6.19.7.5 NMAC - Rp, 6.19.7.5 NMAC, 7/31/2023]

6.19.7.6 OBJECTIVE:
The objective of this rule is to establish pathways for demonstrating competency in mathematics, reading, writing, science, and social studies for high school graduation.
[6.19.7.6 NMAC - Rp, 6.19.7.6 NMAC, 7/31/2023]

6.19.7.7 DEFINITIONS:
A. “College readiness option” means college entrance exam, college placement exam, or the completion of core college-credit-bearing course or exam.

B. “Core content areas” means mathematics, reading, writing, science, and social studies.

C. “Demonstration of competency” means the passing of appropriate district-created, state, or national options used to demonstrate competency in mathematics, reading, writing, science, or social studies for high school graduation, as outlined in a department graduation manual.

D. “Local education agency” or “LEA” means a local school district or state-chartered charter school.

E. “Program of study” means a progressive continuum of courses that may be offered across grades nine through 12 to provide technical training, training to prepare for employment, and training to prepare for entry into postsecondary education.

F. “Workforce readiness option” means workforce readiness exam, industry certificate, or completion of designated program of study.
[6.19.7.7 NMAC - Rp, 6.19.7.7 NMAC 7/31/2023]

6.19.7.8 GENERAL REQUIREMENTS FOR DEMONSTRATIONS OF COMPETENCY:

A. The department shall annually develop and publish a graduation manual for each graduating class starting with the class of 2025. The manual shall be published on the department’s website or available upon request. The graduation manual shall include information on graduation requirements and options for the demonstration of competency.

B. Students must participate in federal Title 1 assessments in addition as a prerequisite to demonstrating competency.

C. Students may demonstrate competency in each of the core content areas using standards-based indicators including:

(1) District-approved, teacher- team-created course final exams, final projects, portfolios, or capstone projects;

(2) Results from national or state college or career readiness assessments, dual credit courses, or career technical certificates or programs of study.

(3) Demonstrations of competency of state standards for high school graduation shall not include the following:

(a) artifacts which are not the product of the student’s independent work;

(b) collaborations in which an individual student’s contributions cannot be distinguished.

(c) teacher or employer recommendations;

(d) artifacts that are not related to content areas required for graduation;

(e) letters of acceptance from higher education institutions; and

(f) options that are not aligned with the department’s graduation manual.

D. LEAs shall determine the number of opportunities that a student has to demonstrate competency for each option.

E. LEAs and school boards may offer all or some of the demonstrations of competency outlined in Subsection C of this section except assessments required by the state.

F. If at the end of grade twelve a student has not demonstrated competency of state standards in the core content areas, the student shall be issued a certificate indicating course credits earned and grade level completed. Students issued a certificate may provide evidence of the demonstration of competency within five years of exiting a public school or state educational institution to satisfy competency in required core content areas and earn a New Mexico diploma of excellence.

G. Students with an IEP that provides individualized graduation indicators shall adhere to the expectations for either the modified or ability program of study outlined in Items (ii) and (iii) of Subparagraph (b) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. Individualized passing scores on demonstration of competency options shall be determined by the IEP team. Individualized passing scores may be subject to department review. Students following the requirements

for the modified or ability program of study who meet the competency requirements established in their IEP shall earn a diploma. Students obtaining a diploma through modified or ability programs of study have the right to continue to receive special education and related services as part of their entitlement to a free appropriate public education until the student meets or exceeds all requirements to obtain a diploma through the standard program of study or until the end of the academic year in which the student becomes 22 years of age.

H. LEAs shall ensure that all high school students have the opportunity to participate in college readiness or workforce readiness options pursuant to Section 22-2C-4.1 NMSA 1978.
[6.19.7.8 NMAC – Rp, 6.19.7.8 NMAC 7/31/2023]

6.19.7.9 DATA REPORTING AND GRADUATION RATES:

A. Data reporting. LEAs shall provide data to the department for each student regarding the content areas in which the student has demonstrated competency. The school shall retain records documenting the options utilized by the student to demonstrate competency.

B. Department audits. The department may conduct annual, randomized audits at the school and LEA level to monitor the implementation of this rule. LEAs shall cooperate with department audits.

C. Recordkeeping. Records of demonstrations of competency shall be kept by LEAs for no fewer than five years and in accordance with federal and state requirements.
[6.19.7.9 NMAC - Rp, 6.19.7.9 NMAC, 7/31/2023]

16.19.7.10 - 16.19.7.15 [RESERVED]
[6.19.7.10 NMAC – 6.19.7.15 NMAC, Repealed, 7/31/2023]

HISTORY OF 6.19.7 NMAC:

6.19.7 NMAC - High School Readiness Assessment System for Career and College, filed 1/30/2009 was repealed and replaced by 6.19.7 NMAC - Demonstration of Competency for High School Graduation, effective 7/24/2018. 6.19.7 NMAC - Demonstration of Competency for High School Graduation, filed 7/24/2018 was repealed and replaced by 6.19.7 NMAC - Demonstration of Competency for High School Graduation, effective 7/31/2023.

History of Repealed Material:

6.19.7.10 NMAC through 6.19.7.15 NMAC, filed 7/24/2023 were repealed, effective 7/31/2023.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 31 SPECIAL EDUCATION PART 3 GIFTED AND TALENTED STUDENTS

6.31.3.1 ISSUING

AGENCY: Public Education Department, hereinafter the department.

[6.31.3.1 NMAC - N, 7/31/2023]

6.31.3.2 SCOPE:

The requirements of these rules are binding on each New Mexico public agency that has direct or delegated authority to provide gifted education and related services, regardless of whether it provides gifted education and related services directly, by contract, or through other arrangements.

[6.31.3.2 NMAC - N, 7/31/2023]

6.31.3.3 STATUTORY

AUTHORITY: Sections 9-24-8, 22-2-1, 22-2-2, 22-13-6 and 22-13-6.1 NMSA 1978.

[6.31.3.3 NMAC - N, 7/31/2023]

6.31.3.4 DURATION:

Permanent.

[6.31.3.4 NMAC - N, 7/31/2023]

6.31.3.5 EFFECTIVE

DATE: July 31, 2023, unless a later date is specified at the end of a section.

[6.31.3.5 NMAC - N, 7/31/2023]

6.31.3.6 OBJECTIVE:

This rule is promulgated to assist New Mexico public agencies in appropriately identifying and providing educational services for gifted students. The purposes of this rule are to ensure all gifted students have gifted education and related services to meet their individual needs; ensure that the rights of gifted students and their parents are protected; assist public agencies to provide for the education of all gifted students; and evaluate and ensure the effectiveness of efforts to educate those students.

[6.31.3.6 NMAC - N, 7/31/2023]

6.31.3.7 DEFINITIONS:

A. “Aptitude” means capacity to acquire competence, skill, or behaviors that can be monitored, evaluated, or observed.

B. “Articulation” means the communication and planning about student educational needs that occurs as students are promoted through the school system grade by grade.

C. “Artistic ability” means having exceptional capability or potential in visual art, theater, music, or dance. Artistic ability is demonstrated by achieving an advanced level on a performance assessment or scoring in the ninety-fifth percentile or above on standardized arts assessments.

[History notes go here.]

D. “Commensurate growth” means the academic and affective progress that can be measured and should be expected of a gifted student given the student’s level of achievement, learning needs, and abilities matched with the appropriate instructional level.

E. “Creative or divergent thinking” means having exceptional capability or potential to solve a problem or reach a decision using strategies that deviate from commonly used or previously taught strategies, which is demonstrated by achieving an advanced level on performance assessments or scoring in the ninety-fifth percentile or above on standardized tests of creative or divergent thinking.

F. “General intellectual ability” means having exceptional capability or potential recognized through cognitive processes, such as memory, reasoning, rate of learning, spatial reasoning, ability to find and solve problems, ability to manipulate abstract ideas, and ability to make connections, which is demonstrated by scoring in the ninety-fifth percentile or above on standardized cognitive ability tests.

G. “Gifted individualized education program” or “GIEP” means a written statement for a gifted student that is developed, reviewed, and revised to deliver appropriate educational services to meet the needs of gifted students.

H. “Gifted individualized education program team” or “GIEP team” means a multidisciplinary team that includes:

- (1) the parents or guardians of the gifted student;
- (2) if the gifted student is participating in the general education environment, at least one of the gifted student’s general education teachers;
- (3) at least one of the gifted student’s gifted education teachers, and if appropriate, at least one of twice-exceptional student’s special education providers;
- (4) an LEA representative who is:

(a) qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of gifted students;

(b) knowledgeable of the general education curriculum; and

(c) knowledgeable of the availability of resources of the department;

(5) other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and

(6) whenever appropriate, the gifted student.

I. “Gifted student” means a person between the ages of five and 21 whose abilities, talents, or potential for accomplishment are so exceptional or developmentally advanced that they require special provisions to meet their educational programming needs.

J. “Identification process” means a procedure for screening, referral, evaluation, and identification of gifted students.

K. “LEA” means a local education agency, being a public school district or a state-chartered charter school.

L. “Leadership ability” means exceptional capability or potential to influence, inspire, and empower groups demonstrated by achieving an advanced level on leadership ability performance assessment or scoring in the ninety-fifth percentile or above on standardized leadership tests.

M. “Performance assessment” means systematic analysis or evaluation of a student’s product, performance, or behaviors based on valid criteria, scoring rubric, or rating scale norms.

N. “Pre-advanced placement” means a variety of programs and strategies that prepare students to take advanced placement courses before or during high school.

O. “Precollege” means a variety of programs to help students plan, apply, and pay for college. Programs may be administered by schools, colleges and universities, or community organizations or businesses.

P. “Problem-solving or critical thinking” means having outstanding capabilities to analyze a problem and engage in solutions-oriented performance, which is

demonstrated by achieving an advanced level on problem-solving or critical thinking performance assessments or scoring in the ninety-fifth percentile or above on standardized problem-solving assessments.

Q. “Screening” means an assessment method used to provide evidence of exceptional potential ability or aptitude. Screening tools may be qualitative or quantitative. Screening data contribute to a body of evidence for making identification and instructional decisions.

R. “Specific aptitude” means having exceptional capability in a subject area, such as having a strong knowledge base or the ability to ask insightful, pertinent questions within the discipline, and achievement at an advanced level on performance assessments or state standardized achievement tests. Specific aptitude subject areas include all subject areas for which educational standards for students have been adopted in Chapter 29 of Title 6 NMAC.

S. “Twice-exceptional” means a student who is identified as a gifted student and is:

(1) identified as a student with a disability pursuant to 6.31.2 NMAC; or

(2) a qualified individual pursuant to Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. §794.

[6.31.3.7 NMAC - N, 7/31/2023]

6.31.3.8 ADVISORY COMMITTEE:

A. Each LEA shall create a gifted advisory committee of parents, community members, students, and school staff members. A school district may create as many advisory committees as there are high schools in the school district or may create a district-wide advisory committee.

B. The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the LEA or the schools which the advisory committee represents. Representation from all schools the committee is advising is required.

C. The advisory committee shall:

(1) regularly review the goals and priorities of the gifted program, including the operational plans for student evaluation, identification, placement, and service delivery;

(2) demonstrate support for the gifted program;

(3) provide information to the department about the impact that cultural background, linguistic background, socioeconomic status, and disability conditions within the community may have on the student identification process and service delivery;

(4) advocate for students of underrepresented groups due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these students have equal opportunities to benefit from services for gifted students;

(5) meet three or more times per year at regular intervals; and

(6) work with the LEA administration to complete an annual report of the LEA’s gifted programming. The LEA shall submit the report to the department.

D. The LEA shall maintain formal documentation of committee membership, activities, and recommendations. If proposals are made by the committee, they shall be submitted in writing to the LEA. The LEA shall respond in writing to any proposed actions before the next scheduled meeting of the advisory committee.

[6.31.3.8 NMAC - N, 7/31/2023]

6.31.3.9 GIFTED EDUCATION PROGRAM PLAN:

A. LEAs shall submit a gifted education program plan for the next fiscal year to the department every other year by a department-assigned date. A gifted education program plan shall be deemed complete if it addresses all elements specified in Subsection B of this section. The gifted education

program plan shall describe the efforts the LEA will make to identify gifted students from all demographic groups, including racially and ethnically diverse students, economically diverse students, culturally diverse students, students with limited English proficiency, and students with disabilities.

B. A gifted education program plan shall:

(1) describe how the LEA will communicate with parents and school personnel about the gifted program plan described in this subsection;

(2) describe the identification process the LEA will use to identify gifted students. The identification process shall recognize a student's exceptional abilities or potential, interests, and needs to guide student instruction and individualized programming. The description of the identification process shall include:

(a) procedures to equalize access to screening and to improve proportionality of representation for all demographic groups pursuant to Subsection A of this section;

(b) referral and screening procedures;

(c) multiple sources of qualitative and quantitative data;

(d) qualification criteria;

(e) GIEP team procedures;

(f) methods and timeline for communicating with parents about results and next steps of a student's eligibility, and GIEP development and review; and

(g) dispute resolution processes to address parent disputes over gifted identification or parent disputes over gifted services. The dispute resolution process shall be pursuant to Section 14 of this rule.

(3) describe the programming components the LEA will use to address the educational needs of gifted students. Programming components shall

use evidence-based programs and service models to produce advanced outcomes, develop the strengths and interests of gifted students, and address other educational needs as determined by GIEP teams. Anticipating these needs, programming components shall address:

(a) alignment of current assessment data to services in the areas of gifted students' needs;

(b) structures by which gifted students' anticipated individual needs shall be met at each grade level;

(c) support for gifted students' general education teachers in differentiated instruction methods;

(d) social, affective, and guidance support systems for gifted students;

(e) alignment of general education and gifted education instructional content with gifted students' areas of strength;

(f) articulation to meet gifted students' needs as they are promoted to the next grade;

(g) articulation to meet gifted students' needs as they graduate from high school and continue in a postsecondary learning setting;

(h) pre-advanced placement or precollege support;

(i) whole-grade and single-subject acceleration policy or procedures; and

(j) GIEP development and annual review conducted through GIEP teams.

(4) describe how the LEA will:

(a) assess and monitor gifted students' commensurate growth in academic achievement;

(b) assess and monitor gifted students' affective development;

(c) ensure assessment and reporting of gifted students' academic achievement

are consistent with accreditation requirements;

(d) periodically conduct a program evaluation of the gifted program, including evaluation feedback from the advisory committee pursuant to Section 8 of this rule, and review programming components including but not limited to gifted policy, goals, identification processes, programming components, staffing, budget and reporting practices, and the impact of programming on gifted student achievement and progress; and

(e) inform parents, educators, and other required GIEP team members of the program evaluation.

(5) describe the staffing plan and qualifications of those who provide instruction, counseling, coordination, and other support for gifted students. Qualified gifted education personnel shall have professional knowledge about characteristics and needs of gifted students and appropriate instruction methods, and shall demonstrate professional competencies in gifted education pursuant to 6.64.18 NMAC;

(6) describe how the LEA will manage and coordinate implementation of the program plan;

(7) describe professional development activities to:

(a) improve and enhance the skills, knowledge, and expertise of teachers and other personnel who provide instruction and other services to gifted students; and

(b) recruit and train new qualified gifted education teachers to fill any anticipated vacancies, if applicable;

(8) describe efforts to collaborate with postsecondary educational institutions to provide professional learning for gifted education teachers;

(9) provide evidence of the LEA's efforts to achieve equity by reporting:

(a) the number of formally identified

gifted students served through gifted programming by grade level, gender, race, ethnicity, twice-exceptionality, and linguistic diversity;

(b) the number of non-identified students served through gifted programming;

(c) the percentage of all students identified as gifted through formal identification processes;

(d) the number and proportion of gifted education teachers to gifted students; and

(e) methods and tools used to monitor the effectiveness of services as evidenced by gifted students' achievement and commensurate growth.

C. Department approval or disapproval of a gifted education program plan shall remain in effect for two years or until a revised gifted education program plan is evaluated by the department.

D. Nothing in this section shall preclude a school district or charter school from offering additional gifted programs for students who fail to meet the eligibility criteria. However, the state will only provide state funds for department-approved gifted programs for those students who meet the established criteria.

[6.31.3.9 NMAC - N, 7/31/2023]

6.31.3.10 GIFTED FUNDING EDUCATION PLAN REPORTING REQUIREMENTS: LEA shall report annually the revenue and expenditure details regarding gifted education funds received through the state equalization guarantee formula, and gifted expenditures from Title I and Title II funds in the Education Plan pursuant to 6.29.1 NMAC.

[6.31.3.10 NMAC - N, 7/31/2023]

6.31.3.11 EVALUATION PROCEDURES FOR GIFTED STUDENTS:

A. Areas of need. Student needs for individualized gifted education shall be based on evidence of:

- (1) general intellectual ability;
- (2) creative or divergent thinking;
- (3) problem solving or critical thinking;
- (4) specific aptitude or achievement;
- (5) artistic ability, creativity, problem solving, or achievement; or
- (6) leadership ability, creativity, problem solving, or achievement.

B. Universal screening. Each LEA shall establish a procedure to ensure that every student's potential to qualify as a gifted student is assessed by the end of grade three. Universal screening assessment results shall be used for referral for further assessment and may include group or individually administered assessments of academic achievement or cognitive ability.

C. Analysis of qualification data. Prior to determination of eligibility by the GIEP team, district or charter school personnel determining a student's qualification for gifted education shall consider documentation and analysis of qualitative and quantitative data from multiple sources to assess areas of strength. Sources shall include:

- (1) standardized quantitative assessment data;
- (2) qualitative data from the assessment of student abilities by qualified individuals evaluating evidence such as collections of work, audio and video recordings, interviews, or observations; and
- (3) if applicable, performance assessments or standardized assessments of artistic ability.

D. Eligibility determination. A GIEP team shall determine that a student is eligible for gifted identification using both qualitative and quantitative gifted qualification data. The GIEP team shall consider:

- (1) information regarding a student's

cultural, linguistic, and socioeconomic background;

- (2) any disabling condition pursuant to Section 22-13.6.1 NMSA 1978; and
- (3) evidence of the areas of need in at least but not limited to Paragraphs (1) through (4) of Subsection A of this section.

E. An LEA may apply to use an alternative identification process for all students subject to the approval of the department. Eligibility of a student will then be determined by a properly administered and collected, department-approved alternative protocol designed to evaluate a student's potential giftedness in at least the four categories of need in Paragraphs (1) through (4) of Subsection A of this section.

[6.31.3.11 NMAC - N, 7/31/2023]

6.31.3.12 GIFTED INDIVIDUAL EDUCATION PROGRAM:

A. To ensure the individual needs of each gifted student are met, the GIEP team shall create and update annually a GIEP document. A GIEP shall include but not be limited to the following information:

- (1) student demographic information;
- (2) area(s) of original qualification;
- (3) qualification data used to determine gifted eligibility;
- (4) educational needs for growth in area(s) of strength;
- (5) educational needs for growth in other area(s);
- (6) short term goals to address areas of need;
- (7) long term goals to address areas of need;
- (8) teacher and parent input;
- (9) student input;
- (10) planned course of study;
- (11) accommodations and modifications;

(12) schedule of services;

(13) transition information; and

(14) prior written notice of actions proposed and either accepted or rejected by the LEA with rationale for acceptance or rejection.

B. The IEP of a twice-exceptional student shall take the place of the GIEP when it provides the information required in Subsection A of this section.

[6.31.3.12 NMAC - N, 7/31/2023]

6.31.3.13 GIFTED CASELOAD REQUIREMENTS:

To ensure the specific needs of each gifted student are met, LEAs shall follow the caseload requirements found in Subsection I of 6.29.1.9 NMAC.

[6.31.3.13 NMAC - N, 7/31/2023]

6.31.3.14 GIFTED DISPUTE RESOLUTION:

A. To ensure the specific needs of each gifted student are met, LEAs shall:

(1) Provide a copy of dispute resolution processes to parents and legal guardians at least once a year and when the following occurs:

(a) the first time in a school year that an annual GIEP meeting is scheduled; or

(b) a parent or legal guardian makes a request for a copy of the dispute resolution processes;

(2) Provide explanations of a student's record upon request.

(3) Seek to establish and maintain productive working relationships with the parents of each child the LEA serves and to deal constructively with disagreements.

B. Informal dispute resolution. If disagreements arise between a parent and an LEA over a student's GIEP, either parents or the LEA may convene a new GIEP meeting at any time to attempt to resolve their differences at the local level without state-level intervention.

C. Alternative dispute resolution. Parents and LEAs may request that the department provide a facilitated GIEP meeting or mediation in order to resolve issues in the complaint filed with the department.

(1) Participation in alternative dispute resolution is voluntary, but participation in either mediation or a facilitated GIEP meeting is required prior to submitting a request for formal review pursuant to Subsection D of this section.

(2) The LEA and the parents or legal guardians shall notify the department in writing within five business days of reaching their decisions to jointly request one of these alternative dispute resolution options.

(3) A facilitated GIEP meeting or mediation session shall be completed not later than 30 days after the assignment of the facilitator or mediator by the department. The department may provide an extension of this deadline at the request of the parties.

(4) Mediation requirements. If the parties choose to use mediation, the following requirements apply:

(a) 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 hearings of civil proceedings. Any such agreement shall also be signed by both the parent and the representative of the LEA who has authority to bind the LEA.

(b) If a mediated agreement involves GIEP issues, the agreement shall state that the LEA will subsequently convene a GIEP meeting to inform the student's services providers of their responsibilities under that agreement and revise the GIEP accordingly.

(c) 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.

(d) 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 in dispute.

D. Formal Review. If the parties are unable to resolve the issues through alternative dispute resolution, a written request for review by the department may be filed by the parent or legal guardian of the student. The department may conduct a review of the issues between the parties and the actions of the LEA related to the provision of gifted education.

(1) Requests for formal review by the department shall:

(a) be in writing;

(b) be submitted to the department;

(c) be signed by the parent or legal guardian of the child and have the requestor's contact information;

(d) include the name and the school the child is attending;

(e) include a statement that the LEA has violated a requirement of an applicable state law;

(f) contain a statement of facts on which the allegation of violation is based; and

(g) include a description of a proposed resolution of the problem to the extent known.

(2) Any request that does not contain each of these elements will be declined, and a written explanation for the decision to decline will be provided to the requestor.

(3) The department shall provide written notice to the parties of its decision to proceed with a review of the matter. If the department chooses not to proceed with a review it shall provide reasons for its decision not to proceed.

(4) Parties may continue to negotiate a resolution of the issues during the pendency

of a review by the department. If the issues are satisfactorily resolved through continued negotiations between the parties, the requestor shall submit to the department in writing a formal withdrawal of the request for review.

(5) Review and suggested resolution. If the department decides to review the matter, it shall request all necessary records and information from the LEA and parent or guardian to complete its review. The department, after review of relevant information, shall issue written findings regarding the LEA's compliance with the state law and rules related to gifted education and provide a suggested resolution to address the identified non-compliance or to otherwise resolve the issues between the parties.
[6.31.3.14 NMAC - N, 7/31/2023]

6.31.3.15 ENFORCEMENT OF GIFTED RULE: If an LEA 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 or the student's parent or guardian by any means authorized by state or federal laws or rules.
[6.31.3.15 NMAC - N, 7/31/2023]

HISTORY OF 6.31.3 NMAC:
[RESERVED]

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 63 SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL
PART 8 LICENSURE IN ATHLETIC COACHING, 7-12**

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

[6.63.8.1 NMAC – Rp, 6.63.8.1 NMAC, 7/31/2023]

6.63.8.2 SCOPE: All persons seeking licensure in athletic coaching in grades seven through 12.
[6.63.8.2 NMAC – Rp, 6.63.8.2 NMAC, 7/31/2023]

6.63.8.3 STATUTORY AUTHORITY: Sections 9-24-8, 22-2-1, 22-2-2, and 22-13-31.2 NMSA 1978.
[6.63.8.3 NMAC – Rp, 6.63.8.3 NMAC, 7/31/2023]

6.63.8.4 DURATION: Permanent.
[6.63.8.4 NMAC – Rp, 6.63.8.4 NMAC, 7/31/2023]

6.63.8.5 EFFECTIVE DATE: July 31, 2023, unless a later date is cited in the history note at the end of a section.
[6.63.8.5 NMAC – Rp, 6.63.8.5 NMAC, 7/31/2023]

6.63.8.6 OBJECTIVE: This regulation governs the requirements for persons seeking initial and continued licensure in athletic sports including cheer, dance, and drill coaching, in grades seven through 12.
[6.63.8.6 NMAC – Rp, 6.63.8.6 NMAC, 7/31/2023]

6.63.8.7 DEFINITIONS:
A. "Athletic coaching" means athletic services in grades seven through 12 performed by a head coach or assistant coach, paid or volunteer, for any athletic sport, including cheer, dance, or drill.
B. "Public schools" means school districts, charter schools, or state-supported educational institutions;
C. "Superintendent" means a school district superintendent, charter school director, or the superintendent of a state-supported educational institution.

[6.63.8.7 NMAC – Rp, 6.63.8.7 NMAC, 7/31/2023]

6.63.8.8 REQUIREMENTS: All persons who perform athletic coaching in grades seven through 12 in public schools shall hold valid licenses in athletic coaching issued by the department and maintain current certification in cardiopulmonary resuscitation (CPR), including training in the use of an automated external defibrillator (AED). Certification shall include in-person, hands-on training. Schools shall verify that their coaches maintain current certification in CPR with AED training.

A. Persons seeking a level 1 license in athletic coaching pursuant to the provisions of this regulation shall:

- (1) possess a high school diploma or its equivalent;
- (2) complete the New Mexico activities association's (NMAA's) coaches' training program to include state competencies established by the department in 6.63.8.14 NMAC-

- (3) provide verification of completion of first aid training as approved by NMAA; and
- (4) provide verification of current certification in CPR, including the use of an AED.

B. Persons seeking a level 2 license in athletic coaching shall:

- (1) possess a valid level 1 athletic coaching license with at least three complete athletic seasons of coaching experience at level 1;

- (2) submit verification by the superintendent that the coach has satisfactorily demonstrated the coaches' competencies established by the department in 6.63.8.14 NMAC;
- (3) provide verification of completion of first aid training as approved by NMAA; and
- (4) provide verification of current certification in CPR, including the use of an AED.

C. Persons seeking a level 3 advanced licensure in athletic coaching shall meet the following requirements:

(1) possess a valid level 2 athletic coaching license with at least three athletic seasons of coaching experience at level 2;

(2) submit verification by the superintendent that the coach has satisfactorily demonstrated the coaches' competencies established by the department in 6.63.8.14 NMAC;

(3) possess one of the following:

(a) a New Mexico teaching license with an endorsement in physical education; or

(b) an undergraduate/graduate minor in coaching consisting of at least 24 semester hours of post-secondary coursework at a regionally accredited college or university; or

(c) confirmation of successful completion of an advanced coaching principles course approved by the department;

(4) provide verification of completion of first aid training as approved by NMAA; and

(5) provide verification of current certification in CPR, including the use of an AED.
[6.63.8.8 NMAC – Rp, 6.63.8.8 NMAC, 7/31/2023]

6.63.8.9 IMPLEMENTATION:

A. Level 1 initial licenses shall be valid for a maximum of three years and may not be continued or renewed. Level 2 and 3 licenses are renewable and shall be valid for nine years.

B. All athletic coaching licenses shall commence on July 1st of the year of issuance and expire June 30th of the year of their expiration.
[6.63.8.9 NMAC – Rp, 6.63.8.9 NMAC, 7/31/2023]

6.63.8.10 CONTINUING LICENSURE: Persons holding a level 2 or 3 coaching license shall renew their license every nine years upon verification by the superintendent that the coach has satisfactorily demonstrated the coaches' competencies established by the department in 6.63.8.14 NMAC.

[6.63.8.10 NMAC – Rp, 6.63.8.10 NMAC, 7/31/2023]

6.63.8.11 [RESERVED]
[6.63.8.11 NMAC – Rp, 6.63.8.11 NMAC, 7/31/2023]

6.63.8.12 [RESERVED]
[6.63.8.12 NMAC – Rp, 6.63.8.12 NMAC, 7/31/2023]

6.63.8.13 [RESERVED]
[6.63.8.13 NMAC – Rp, 6.63.8.13 NMAC, 7/31/2023]

6.63.8.14 REFERENCED

MATERIAL: Competencies for Athletic Coaches for grades seven through 12:

A. Philosophy and ethics - coaches will:

(1) develop and implement an athlete-centered philosophy;

(2) identify, model, and teach athletes positive values learned through sport participation;

(3) demonstrate ethical conduct in all facets of the sport program; and

(4) teach and reinforce responsible personal, social, and ethical behavior of all people involved in the sport program.

B. Sport safety and injury prevention - coaches will:

(1) prevent injuries by ensuring that facilities are safe for sport participation;

(2) ensure that necessary protective equipment is available, properly fitted, and used appropriately;

(3) monitor environmental conditions and modify participation as needed to ensure the health and safety of participants;

(4) identify physical conditions that predispose athletes to injuries;

(5) recognize injuries and provide immediate and appropriate care;

(6) facilitate a coordinated sports health care program of prevention, care, and management of injuries; and

(7) identify and address the psychological implications of injury.

C. Physical conditioning - coaches will:

(1) design programs of training, conditioning, and recovery that properly utilize exercise physiology and biomechanical principles;

(2) be an advocate for drug-free sport participation and provide accurate information about drugs and supplements; and

(3) plan conditioning programs to help athletes return to full participation following injury.

D. Growth and development - coaches will:

(1) apply knowledge of how developmental change influences the learning and performance of sport skills; and

(2) facilitate the social and emotional growth of athletes by supporting a positive sport experience and life-long participation in physical activity.

E. Teaching and communication - coaches will:

(1) provide a learning environment that is appropriate to the characteristics of the athletes and goals of the program;

(2) develop and monitor goals for the athletes and program;

(3) organize practice based on a seasonal or annual practice plan to maintain motivation, manage fatigue, and allow for peak performance at the appropriate time;

(4) plan and implement daily practice activities that maximize time on task and available resources;

(5) utilize appropriate instructional strategies to facilitate athlete development and performance;

(6) teach and incorporate mental skills to enhance performance and reduce sport anxiety;

(7) use effective communication skills to enhance individual learning, group

success and enjoyment in the sport experience; and

(8) demonstrate and utilize appropriate and effective motivational techniques to enhance athlete performance and satisfaction.

F. Sport skills and tactics - coaches will:

(1) know the skills, elements of skill combinations, and techniques associated with the sport being coached;

(2) identify, develop, and apply specific competitive sport strategies and specific tactics appropriate for the age and skill levels of the participating athletes; and

(3) use scouting methods for planning practices, game preparation, and game analysis.

G. Organization and administration - coaches will:

(1) demonstrate efficiency in contest management;

(2) be involved in public relations activities for the sport program;

(3) manage human resources for the program;

(4) manage fiscal resources for the program;

(5) facilitate planning, implementation, and documentation of the emergency action plan;

(6) manage all information, documents, and records for the program; and

(7) fulfill all legal responsibilities and risk management procedures associated with coaching.

H. Evaluation - coaches will:

(1) implement effective evaluation techniques for team performance in relation to established goals;

(2) use a variety of strategies to evaluate athlete motivation and individual performance as they relate to season objectives and goals; and

(3) utilize an effective and objective process for evaluation of athletes to assign roles or positions and establish individual goals;

(4) utilize an objective and effective process for the evaluation of self and staff.

[6.63.8.14 NMAC – Rp, 6.63.8.14 NMAC, 7/31/2023]

HISTORY OF 6.63.8 NMAC:

PRE-NMAC HISTORY:

The material in this rule was derived from that previously filed with the State Records Center and Archives under: SBE Regulation No. 89-9 Licensure in Coaching, K-12, filed November 17, 1989, and SBE Regulation No. 92-4 Licensure in Athletic Coaching, 7-12, filed May 20, 1992.

History of Repealed Material:

6.63.8 NMAC – Licensure in Athletic Coaching, 7-12, filed 6/15/1998, was repealed and replaced by 6.63.8 NMAC – Licensure in Athletic Coaching, 7-12, effective 7/31/2023.

PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.12.15 NMAC, Sections 1, 6, and 8, effective July 31, 2023.

6.12.15.1 ISSUING

AGENCY: Public Education Department, hereinafter [referred to as] the department.

[6.12.15.1 NMAC – N, 10/13/2021; A, 7/31/2023]

6.12.15.6 OBJECTIVE:

This rule establishes the requirements for [the operation of] public schools [during the COVID-19 pandemic] to adhere to public health orders, executive orders, and department guidance.

[6.12.15.6 NMAC – N, 10/13/2021; A, 7/31/2023]

6.12.15.8 REQUIREMENTS FOR SCHOOLS:

A. [School districts

and schools shall] School districts and charter schools shall follow all public health orders, executive orders, and department guidance [including the COVID-19 response toolkit for New Mexico's public schools] for the operation of schools, school sponsored activities, and school premises, including school transportation; and

B. [School districts and schools shall] School districts and charter schools shall honor tribal sovereignty and abide by applicable tribal public health orders, tribal executive orders, and tribal council resolutions.

[6.12.15.8 NMAC – N, 10/13/2021; A, 7/31/2023]

PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.29.1 NMAC, Sections 3, 6, 7, 8, 9, and 11, effective July 31, 2023.

6.29.1.3 STATUTORY

AUTHORITY: This rule is being promulgated pursuant to Sections 9-24-8, 22-2-1, 22-2-2, 22-2C-3, 22-2C-4, 22-5-13, 22-13-1.1, and 22-13-14 NMSA 1978.

[6.29.1.3 NMAC - Rp, 6.30.2.3 NMAC, 6/30/2009; A, 12/15/2020; A 7/31/2023]

6.29.1.6 OBJECTIVE:

This rule provides for the implementation of educational standards and expectations for all students who attend public schools in the state. [The New Mexico content standards with benchmarks and performance standards specify the goals for instruction:]

[6.29.1.6 NMAC - Rp, 6.30.2.6 NMAC, 6/30/2009; A, 12/15/2020; A, 7/31/2023]

6.29.1.7 DEFINITIONS:

A. [“Ability program of study” means an alternative graduation option for students with disabilities. This option is based on the student’s meeting or exceeding IEP goals and objectives, with or

without reasonable accommodations of delivery and assessment methods, referencing skill attainment at a student's ability level, which provides a clear and coordinated transition to meaningful employment or other appropriate day habilitation or community membership and independent living, as appropriate to meet anticipated functional needs.

—————**B.] “Accreditation”** means the official recognition that a school or school district meets required standards. Schools are accredited by voluntary regional accrediting associations or by state government. Accreditation also refers to the process of certifying that institutions of higher education meet certain standards in relation to such matters as the qualifications of their faculty, the condition of their facilities, and the appropriateness of their curriculum.

[C] B. “Advanced placement (AP)” means a course taught by high school teachers trained in advanced placement course delivery provided through the college board. These courses are more difficult and involve more work than a standard class. AP courses are considered college-level courses and may allow a student to earn college credit, depending on college or university policies.

[D] C. “Bilingual multicultural education” means a program of instruction using two languages, including English and the home or heritage language, as a medium of instruction in the teaching and learning process.

[E] D. “Career and technical education” means organized programs offering a sequence of courses, including technical education and applied technology education, which are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring an industry-recognized credential, certificate, or degree. This phrase is also referred to as “vocational education” at Section 22-14-1 NMSA 1978.

[F] E. “Career cluster” means a grouping of occupations in industry sectors based on recognized commonalities. Career clusters provide an organizing tool for developing instruction within the educational system.

[G] F. “Career pathways” means a sub-grouping used as an organizing tool for curriculum design and instruction of occupations or career specialties that share a set of common knowledge and skills for career success.

~~**[H.] “Career readiness program of study”** means an alternative graduation option for students with disabilities. This option is based on meeting the department’s employability and career education standards with benchmarks and performance standards as identified in the student’s IEP.~~

—————**[I] G. “Caseload”** means the total number of students receiving special education and speech-only services as special education, for whom a special education teacher or speech language pathologist has responsibility for developing and monitoring the students’ IEPs. “Caseload” may also mean the number of students for which individual support services staff members are responsible.

—————**H. “Certified district reviewer”** means an LEA employee who is certified to review and approve an LEA’s NM School DASH plans.

[J] I. “Chartering authority” means a local school board or the commission that approves and oversees a charter school.

[K] J. “Commission” means the public education commission.

[L] K. “Class load” means the number of students for whom a teacher structures activities at a given time.

[M] L. “Content standard” means a statement about performance that describes what students should know and be able to do in content areas at each grade level.

[N] M. “Correspondence course” means a form of distance learning conducted via traditional mail. A correspondence course is used to teach non-resident students by mailing them lessons and exercises, which upon completion, are returned to the correspondence school for grading.

[O] N. “Dual credit program” means a program that allows high school students to enroll in college-level courses offered by a post-secondary educational institution that may be academic or career-technical but not be remedial or developmental, and simultaneously to earn credit toward high school graduation and a post-secondary degree or certificate.

[P] O. “[Educational plan for student success (EPSS)] Education plan” is the strategic plan written by all school districts, [and schools] locally chartered and state-chartered charter schools to improve student performance.

[Q] P. “English language learner” means a student whose first or heritage language is not English and who is unable to read, write, speak, or understand English at a level comparable to grade-level English proficient peers and native English speakers.

[R] Q. “Free appropriate public education (FAPE)” means special education and related services that are provided at public expense, under public supervision and direction without charge, which meet the standards of the department in providing appropriate preschool, elementary or secondary education in New Mexico; and which are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR Sections 300.320 through 300.324.

[S] R. “Family Educational Rights and Privacy Act (FERPA)” means rights, pursuant to 20 U.S. Code 1232(g) and 34 CFR Part 99, afforded to parents and students over 18 years of age with respect to the student’s education records, that include: the right to inspect and review the student’s

education records within 45 days, the right to request amendment to the student's education records for various reasons, the right to consent or refuse to consent to disclosures of personally identifiable information in the student's records (except for those records that FERPA authorizes for disclosure without consent) and the right to file a complaint with the U.S. department of education concerning non-compliance with FERPA.

~~[F]~~ **“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 services are required to meet the child's educational needs.

~~[U]~~ **S. “Heritage language”** means a language other than English that is inherited from a family, tribe, community, or country of origin.

~~[V]~~ **T. “Home language”** means a language other than English that is the primary or heritage language spoken at home or in the community.

~~[W]~~ **U. “Individuals with Disabilities Education Improvement Act of 2004 (IDEA)”** means the federal Individuals with Disabilities Education Improvement Act of 2004, 20 U.S. Code Secs. 1401 et seq., including future amendments.

~~[X]~~ **V. “Individualized education program (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.

~~[Y]~~ **W. “Laboratory component”** means an experience in the laboratory, classroom or the field that provides students with opportunities to interact directly with natural phenomena or with data collected by others using tools, materials, data collection techniques and models. Throughout the process, students should have opportunities to design investigations, engage

in scientific reasoning, manipulate equipment, record data, analyze results, and discuss their findings.

~~[Z]~~ **X. “Local educational agency (LEA)”** means a local educational agency as defined in 34 CFR Sec. 300.28. The LEA may be a public school district, a state-chartered charter school, or a state educational institution.

~~[AA]~~ **Y. “MLSS Self-assessment”** means analysis of MLSS implementation that each school shall submit in a form and by a due date determined by the department. The MLSS Self-assessment shall contribute to a school's NM School DASH, but it shall not be a component in the evaluation of a school by the department.

~~[AA]~~ **Z. “Multi-layered system of supports (MLSS)”** means a coordinated and comprehensive framework that uses increasingly intensive evidence-based academic and behavioral supports that address student needs as evidenced by student data. It is a model for holistic school improvement that provides progress measures for additional supports such as school-based team structures, professional development, health and wellness, and family and community engagement. MLSS satisfies the definition of “multi-tiered system of supports” contained within the ESSA.

~~[AA]~~ **AA. “NM School DASH”** means the strategic plan written by schools to improve student outcomes. It contains the annual plan, both 90-day plans, and functions as a school site improvement plan.

~~[AB]~~ **AB. “Performance standard”** means the statement of a standard that describes the specific level of mastery expected in achieving the New Mexico content standards with benchmarks.

~~[AC]~~ **AC. “Prior written notice (PWN)”** means the written notice that goes to parents from the school district, informing them the district proposes or refuses to initiate or change the identification, evaluation or educational placement of their child, or the provision of FAPE to the child, and which meets

the requirements of 34 CFR Sections 300.503 and 300.504.

~~[AD]~~ **AD. [“School improvement framework”** means a document written by the department that is used by public schools and districts to develop and monitor their school improvement plans. The school improvement framework shall align with the district's EPSS.

~~[AE]~~ **AE. “Short-cycle assessment”** is a formative assessment that is regularly used to assess student performance over a short time period.

~~[AE]~~ **AE. “Small group setting”** means a planned intervention group containing no more than 15 students.

~~[AF]~~ **AF. “Socioeconomic status”** means the stratification of groups of people by status ascribed through social constructs such as race, gender, ethnicity, educational attainment, economic resources, language, and national origin.

~~[AG]~~ **AG. [“Standard program of study”** means a program of study that is based on the student's meeting or exceeding all requirements for graduation as specified in Section 22-13-1.1 NMSA 1978.

~~[AH]~~ **AH. “State educational institution”** means a school that is under the direction of a state agency other than the department or a separate board of regents.

~~[AF]~~ **AH. “Student assistance team (SAT)”** means a school-based group of people whose purpose is to provide additional educational support to students experiencing difficulties preventing them from benefitting from general education.

~~[AJ]~~ **AI. “System of assessments”** means the collection of instruments that assess student academic performance annually and the students' progress toward meeting the New Mexico content standards with benchmarks and performance standards.

~~[AK]~~ **AJ. “Transition plan”** means a coordinated set of activities for a student with a disability, which specifies special education and

related services designed to meet a student's unique needs and to prepare the student for future education, employment, and independent living. The use of individualized educational program (IEP) transition planning, graduation planning and post-secondary transitions is described in Subparagraph (a) of Paragraph (13) of Subsection J of 6.29.1.9 NMAC. [6.29.1.7 NMAC - Rp, 6.30.2.7 NMAC, 6/30/2009; A, 10/31/2011; A, 12/15/2020; A, 7/31/2023]

6.29.1.8 IMPLEMENTATION:

This regulation shall assist in the implementation of standards for excellence through the use of the [educational plan for student success (EPSS)] Education Plan for all school districts and charter schools. At the school site level this regulation shall assist in the implementation of standards for excellence through the use of the NM School DASH, content standards with benchmarks and performance standards, and additional program and procedural requirements specified in this regulation. [The primary mechanism for planning and implementation is the educational plan for student success (EPSS).]

A. District and charter school responsibilities for the [EPSS] Education Plan and NM School DASH. The [EPSS is a strategic improvement plan that is] Education Plan and NM School DASH are strategic improvement plans that are written or revised based on trend data and the academic achievement of the school and district. Each district and each charter school is required to develop, implement, monitor and evaluate the [plan] Education Plan on an annual basis. Additionally, the district shall ensure that a site-level [EPSS] NM School DASH is developed and implemented by each school within the district and by each charter school for which the district is the chartering agency. LEAs shall have each NM School DASH evaluated and approved by a certified district reviewer. State-chartered charter schools shall develop a site-level [EPSS] NM School DASH.

Districts with fewer than [600] 200 students may write only one [EPSS] NM School DASH for the entire district; however, a district with a school in or receiving a school improvement status classification is not eligible for this option. The [EPSS] Education Plan and NM School DASH shall be guided by [the following four questions:] questions determined by the department.

(1) — What is the current level of performance compared with the annual measurable objectives (AMOs)? This requires a review of student performance data using system of assessments trends, available short-cycle assessments and other assessments used at local sites.

(2) — Where does the district or charter school need to be, compared with the AMOs? This requires a review of overall goals/target areas (performance indicators).

(3) — How will the district or charter school achieve its stated goals/target areas? This requires development of strategies and activities for improvement.

(4) — How does the district or charter school know it is meeting short-term and annual goals? This requires a review of available short-cycle and system of assessments data.

B. — The school improvement framework. The school improvement framework is the document that is used by public schools and districts to develop, implement, monitor and evaluate schools in the school improvement process. The department shall develop the framework in alignment with applicable state and federal laws. It shall be revised annually or as necessary, and approved by the secretary.

[6.29.1.8 NMAC - Rp, 6.30.2.9 NMAC, 6/30/2009; A, 10/31/2011; A, 12/15/2020; A, 7/31/2023]

6.29.1.9 PROCEDURAL REQUIREMENTS:

A. Duties and powers of the local board of education or charter school governing body. [In

addition to the powers and duties set out in Section 22-5-4 NMSA 1978 and Section 22-1-1 et seq. NMSA 1978 of the Public School Code, the] The local board of education or charter school governing body shall:

(1) review, approve, and support [the district's department approved improvement plan and] each school site-level department-approved [improvement plan, or the charter school's department approved improvement plan] NM School DASH and MLSS Self-assessment for each school site in improvement status;

(2) employ and evaluate the local superintendent or charter school administrator;

(3) develop a planned program of training annually, in which each member of the board participates, to assist in the performance of specified duties; this planned program shall align with the [district's EPSS] LEA's Education Plan; training shall include the following requirements and procedures.

(a) All local school board members shall receive a total of five hours of annual training provided by the New Mexico school boards association (NMSBA) and shall include a minimum of one hour of training during each term in office on equity and culturally and linguistically responsive practices.

(b) Newly elected or appointed local school board members, who are in office for less than a year, shall receive three of the five hours from attending a training course developed by the department and sponsored by the NMSBA. The additional two hours of annual training for new board members shall consist of sessions sponsored by the NMSBA and approved by the department.

(c) All local school board members who have been in office for one or more years shall attend five hours of annual training sponsored by the NMSBA and approved by the department.

(d) In order to be credited with attendance

at these courses, each attendee shall comply with written attendance procedures established by the department. Prior to September 1 of each year, the NMSBA shall provide each local superintendent with a list of training hours earned annually by each local school board member. The school district's accountability report shall include the names of those local school board members who failed to attend annual mandatory training (see Subsection [G] E of Section 22-2C-11 NMSA 1978);

(4) delegate administrative and supervisory functions to the local superintendent or charter school administrator;

(5) refrain from involvement in delegated administrative functions;

(6) review district or charter school policies on an annual basis and revise as needed;

(7) award high school graduation diplomas to students who have successfully completed graduation requirements;

(8) ensure the alignment of district or charter school curricula with New Mexico content standards with benchmarks and performance standards;

(9) ensure that district or charter school funds are appropriately managed and disbursed in accordance with laws, regulations and terms of grants;

(10) approve the annual district or charter school budget;

(11) be responsible for oversight of revenue and expenditures within the district or charter school budget; and

(12) coordinate with the district's superintendent to establish the procedures for discharging and terminating school employees pursuant to Section 22-5-4 NMSA 1978 and the School Personnel Act (Chapter 22, Article 10-A NMSA 1978).

B. Duties and powers of the governing body of a charter school. In addition to the powers and duties set out in Section 22-5-4 NMSA 1978 and Section 22-1-1 et

seq. NMSA 1978 of the Public School Code, the governing body of a charter school shall:

(1) review, approve and support the district's department-approved improvement plan and each school site-level MLSS Self-assessment and department approved improvement plan, or the charter school's department approved improvement plan;

(2) employ and evaluate the local superintendent or charter school administrator;

(3) develop a planned program of training annually, in which each member of the governing body participates, to assist in the performance of specified duties; this planned program shall align with all requirements of statute and any other department regulations;

(4) delegate administrative and supervisory functions to the local superintendent or charter school administrator;

(5) refrain from involvement in delegated administrative functions;

(6) review district or charter school policies on an annual basis and revise as needed;

(7) award high school graduation diplomas to students who have successfully completed graduation requirements;

(8) ensure the alignment of district or charter school curricula with New Mexico content standards with benchmarks and performance standards;

(9) ensure that district or charter school funds are appropriately managed and disbursed in accordance with laws, regulations and terms of grants;

(10) approve the annual district or charter school budget;

(11) be responsible for oversight of revenue and expenditures within the district or charter school budget; and

(12) coordinate with the district's superintendent to establish the procedures for discharging and terminating school

employees pursuant to [~~Section 22-5-4 NMSA 1978 and~~] the School Personnel Act (Chapter 22, Article 10-A NMSA 1978).

C. Duties and powers of the district superintendent or the administrator of a charter school. In addition to the powers and duties set out in Section 22-5-14 NMSA 1978 of the Public School Code, the local superintendent (or charter school administrator, where relevant) shall:

(1) administer local board's (or governing body of a charter school's) policies, state and federal requirements and applicable laws, including the Public School Code;

(2) be accountable for student achievement; budget management; expenditure of funds; dissemination of information; district or charter school communications; development, implementation and evaluation of the [EPSS] Education Plan and all other district or charter school business;

(3) review, approve and support the district [EPSS] Education Plan and each school site-level [EPSS] MLSS Self-assessment and NM School DASH or the charter school's [EPSS] MLSS Self-assessment and NM School DASH;

(4) attend all local board or governing body of a charter school's meetings or, when necessary, designate a licensed administrator to attend;

(5) ensure that school patrons and the public are informed and involved in the acquisition, planning and development of school facilities and that students are provided with adequate facilities which conform to state and federal mandates;

(6) be accountable for student safety (see 6.12.6 NMAC - *School District Wellness Policy*):

(a) ensure that all students are supervised while on school property and while attending or traveling to school events or activities on school-provided transportation;

(b) ensure that all buildings, grounds and facilities provide a safe and orderly environment for public use (see Subsection P of 6.29.1.9 NMAC - *School Facilities and Grounds*; Paragraph (8) of Subsection D of 6.12.6.8 NMAC - *School District Wellness Policy* and 6.19.3 NMAC - *Unsafe School Choice Option*);

(7) administer and implement the district's or charter school's approved staff accountability plan and procedures;

(8) ensure that a process is in place to identify, train, assign and support the use of unlicensed content-area experts as resources in classrooms, team teaching, online instruction, curriculum development and other purposes as determined by the superintendent, which shall include, but not be limited to, the following:

(a) establish the specific expertise of the person;

(b) obtain a background check and fingerprint records;

(c) provide the person with a three-hour training, prior to entering a classroom, about how the school operates, appropriate teaching methods and expectations of principal and assigned teacher;

(d) establish a start date and ending date for the person;

(e) ensure that the person is under the direct supervision of the teacher assigned when students are present; and

(f) provide for an evaluation of services upon completion of the assignment;

(9) shall issue the following notifications in accordance with Section 22-10A-16 NMSA 1978, in addition to any other parental notification requirements contained in the federal Elementary and Secondary Education Act of 1965, as amended; a school district or charter school shall issue these

notifications in English and, to the extent possible, in the language of the parent or guardian (if it is known that the parent or guardian's home or heritage language is not English); the district or charter school shall retain a copy of all notifications and shall ensure that information required under this paragraph is available to the public upon request.

(a) Within 60 calendar days from the beginning of each school year, a school district or charter school shall issue a notice to parents informing them that they may obtain written information regarding:

(i) the professional qualifications of their child's teachers, instructional support providers and school principals or charter school administrators;

(ii) other descriptive information, such as whether their teacher has met all qualifications for licensure for the grade level and subjects being taught;

(iii) whether their child's teacher is teaching under a teaching or assignment waiver;

(iv) the teacher's degree major and any other license or graduate degree held by the teacher;

(v) the qualifications of any instructional support providers that serve their child.

(b) When, by the end of a consecutive four-week period, a child is still being taught by a substitute teacher or a teacher not holding the requisite licensure or licensure endorsement, the school district or charter school shall provide written notice to the parent or guardian that the child is being taught by a substitute teacher or a teacher not holding the requisite licensure or licensure endorsement.

(c) No class may be taught by a substitute teacher, in lieu of a licensed teacher under contract, for more than 45 school days during a school year.

(d) The secretary shall consider

deviations from the requirements of Subparagraph (c) of Paragraph (9) of Subsection C of 6.29.1.9 NMAC when a written request by a local superintendent or charter school administrator is submitted. The request shall include:

- (i) the size of the school district;
- (ii) the geographic location of the district;
- (iii) demonstrated efforts to employ an appropriately licensed person in the area(s) of need;
- (iv) the historical use of substitutes in the district; and
- (v) an estimation of the number of days that a substitute will be utilized that exceed the 45 day limit.

D. Licensed staff and administrators.

(1) The licensed staff shall exercise duties specified in law and those assigned by the local district or charter school.

(2) As required by state and federal law, all licensed staff and administrators shall be evaluated on an annual basis.

(3) The detection and reporting of child abuse or neglect is required by both the Children's Code (Section 32A-4-3 NMSA 1978) and the Public School Code (Section 22-5-4.2 NMSA 1978). Abuse of a child under the Children's Code refers to the physical, sexual, emotional or psychological abuse of a child by a parent, guardian or custodian. According to the Children's Code, failure to report abuse or neglect of a child is a misdemeanor. The terms "abuse" and "neglect" are defined in detail in Section 32A-4-2 NMSA 1978 of the Children's Code. There is also the crime of child abuse, which consists of anyone who knowingly, intentionally, negligently or without cause, causes or permits a child to be placed in a situation of endangerment to the child's life or health, torturing or cruelly confining a child, or exposing a child to the inclemency of weather. To address the detection and

reporting of child abuse or neglect in public schools:

(a) school districts and charter schools shall adopt written policies that establish a process for the coordination and internal tracking of child abuse or neglect reports made by district personnel;

(b) school districts and charter schools shall include in their policies a requirement that all personnel shall immediately report suspected child abuse or neglect to either a law enforcement agency, the New Mexico children, youth and families department, or a tribal law enforcement or social services agency for any Indian child residing on tribal land;

(c) school districts and charter schools shall not require their personnel to first report to or notify designated school personnel or go through their chain of command before making the mandatory report described in Subparagraph (a) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC;

(d) no school district or charter school shall adopt a policy that relieves any personnel of their duty to report suspected child abuse or neglect;

(e) school personnel detecting suspected child abuse or neglect, including the suspected crime of child abuse, shall immediately - i.e., the same day - report their observations to one of the offices designated in Subparagraph (b) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC;

(f) all licensed school personnel, including substitute teachers, educational assistants, school nurses, school counselors, school psychologists and other instructional service providers shall complete training provided by the department in the detection and reporting of child abuse or neglect, within their first year of employment by, or providing services to, a school district or charter school;

(g) all persons who have never received

training required under Subparagraph (f) of Paragraph (3) of Subsection D of 6.29.1.9 NMAC shall make arrangements to receive training before the end of their current school year;

(h) the department shall develop a training program to detect child abuse or neglect, in coordination with the New Mexico human services department and the New Mexico department of health. This program shall be made available to all colleges, school districts and charter schools in the state offering teacher preparation courses;

(i) nothing in Paragraph (3) of Subsection D of 6.29.1.9 NMAC shall be interpreted as preventing a school district or charter school from developing and providing its own training for all staff to detect and report suspected child abuse or neglect, in addition to the training offered by the department.

E. Student intervention system. The school and school district shall follow the multi-layered system of supports (MLSS), which is a three-layer model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior or for students who demonstrate a need for advanced instruction. All students shall have access to Layer-1, Layer-2, and Layer-3 interventions without a need to convene a SAT team or a referral to special education or related services. At any layer, ~~[a referral from a parent, a school staff member, or if other information available to a school or district suggests that a particular student needs educational support for learning or behavior, then the student shall be referred to the SAT. Likewise, at any layer,]~~ a parent may request initial evaluation to determine whether a student is a child with a disability requiring special education and related service, in accordance with 6.31.2.10 NMAC. There are no additional documentation requirements under

the MLSS outside of what is already required for education professionals.

(1) In Layer-1, the school and school district shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status, and academic levels of proficiency has been completed for each student enrolled. If data from universal screening and progress monitoring suggests that a particular student is in need of additional behavioral and academic supports, then teacher teams shall make a determination on whether or not the student would benefit from layer-2 interventions. Teacher teams, when making a determination for moving a student up or down a layer may consult with non-teacher staff such as counselors, paraprofessionals, administrators, and ancillary personnel to inform the teacher team on how to plan and implement relevant learner interventions in the general education environment.

(2) In Layer-2, a properly constituted teacher team shall conduct the student study process and consider, implement, and document the effectiveness of appropriate evidence-based interventions utilizing curriculum-based measures. As part of this process, the teacher team shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties.

(3) In Layer-3, students are provided with intensive academic and behavioral supports that are progress-monitored on a bi-weekly basis. At the end of each progress monitoring cycle, the teacher team shall evaluate the efficacy of the supports provided using all available data. At that time, the teacher team may decide whether to continue with the current support, change the intensity, or nature of support. If progress monitoring data suggests that the learner has benefited from

provided Layer-3 supports and does not show concern for ~~recidivism, than~~ regression, then the teacher team may decide to move the student out of receiving Layer-3 supports.

(4) All students shall have access to the MLSS layers of screening and support ~~[without a referral to SAT or an evaluation to determine eligibility for special education and related services]~~. Nothing in this section prevents a school district from evaluating a student during the provision of any layer of MLSS to determine whether the student is a child with a disability requiring special education and related services. A parent may request an initial special education evaluation at any time during the public agency's implementation of MLSS, and a school or school district may determine a referral to special education is necessary at any time during the implementation of MLSS if the student is suspected of having a disability. If a school district rejects a request for initial special education evaluation, the parent may use the IDEA procedural safeguards in 34 CFR Secs. 300.506 through 5007 to dispute the rejection of the request to evaluate.

(5) The department's manual, *Multi-layered System of Supports*, shall be the guiding document for schools and districts to use in implementing the student intervention system.

(6) Schools shall complete the MLSS Self-assessment annually.

(7) Schools shall include a report on intervention systems in NM School DASH.

(8) Schools shall provide time embedded within the regular school schedule for all students to access targeted and intensive learner interventions or advanced instruction described as follows:

(a) in small group settings;

(b) aligned with New Mexico standard; and

(c) not to exceed twenty-five percent of instructional hours.

(9) Student placement in embedded intervention or advanced instruction shall be reviewed each quarter and students shall be moved in or out of embedded intervention or advanced instruction based on quantitative and qualitative MLSS data.

(10) Embedded intervention or advanced instruction time shall be provided to students without forgoing instruction in art, music, theater, dance, computer science, physical education, library, or other enrichment or experiential learning activities or courses.

(11) Equitable access. Students in any layer shall have access to grade-appropriate, standards-aligned instruction seventy-five percent or more of their instructional hours unless instructional time is allocated differently in an IEP of a student receiving special education or gifted education services.

F. Records and reports.

(1) Each district and charter school shall maintain and treat all personally identifiable educational records in accordance with the Family Educational Rights and Privacy Act (FERPA), the implementing regulations set forth at 34 Code of Federal Regulations, Part 99 and Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978.

(2) All records shall be safe from fire and theft and stored in a retrievable manner. All student records, including disciplinary and grading records, shall be retained and disposed of pursuant to 1.20.2 NMAC.

(3) Transcripts and copies of pertinent records of students transferring from one school to another, including disciplinary records with respect to suspension and expulsion, shall be forwarded promptly upon written request by the receiving school.

(4) Local school boards and governing bodies of charter schools shall establish policies providing for inspection of education records by students and parents.

(5) ~~[Effective- July 1, 2009, after]~~ After the administration of the high school system of assessments, school districts and charter schools are required to record test results on each student's official transcript. The information recorded shall include the following:

(a) district and high school administering the examination;

(b) date of examination administration;

(c) results of the examination for each subject area tested; and

(d) reports of the results in a format and language that is understandable to parents.

G. Organization of grade levels and establishing/closing schools. Any change in a school district or charter school's organizational pattern, including the establishment or closing of a school, shall have the secretary's approval prior to implementation. Requests for change shall be submitted using the department's *organization of grade levels and establishing/closing school waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. The waiver request shall outline the expected educational benefits.

H. Class loads. Class loads shall be in compliance with the most current class load requirements in Section 22-10A-20 NMSA 1978 and Section 22-5-15 NMSA 1978.

(1) The individual class load for elementary

school teachers shall not exceed 20 students for kindergarten, provided that any teacher in kindergarten with a class load of 15 to 20 students shall be entitled to the assistance of an educational assistant.

(2) The average class load for elementary school teachers at an individual school shall not exceed 22 students when averaged among grades one, two and three, provided that any teacher in grade one with a class load of 21 or more shall be entitled to the full-time assistance of an educational assistant.

(3) The average class load for an elementary school teacher at an individual school shall not exceed 24 students when averaged among grades four, five and six.

(4) The daily teaching load per teacher for grades seven through 12 shall not exceed 160 students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed 135, with a maximum of 27 students per class; and the daily teaching load for teachers of required English courses in grades nine through 12 shall not exceed 150 students, with a maximum of 30 students per class. The teaching load for teachers assigned to laboratories and shops shall adhere to the current workplace safety codes of the industry.

(5) Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

(6) The secretary may waive the individual school class load requirements established in this section. Waivers shall be applied for annually, and a waiver shall not be granted for more than two consecutive years. Requests for class load waivers shall be submitted using the department's *class size waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. Waivers may only be granted if a school district or charter school demonstrates:

(a) no portable classrooms are available;

(b) no other available sources of funding exist to meet the need for additional classrooms;

(c) the district or charter school is planning alternatives to increase building capacity for implementation within one year; and

(d) the parents of all children affected by the waiver have been notified in writing of the statutory class load requirements; that the school district or charter school has made a decision to deviate from these class load requirements; and of the school district's or charter school's plan to achieve compliance with the class load requirements.

(7) If a waiver is granted pursuant to Paragraph (6) of Subsection H of 6.29.1.9 NMAC to an individual school, the average class load for elementary school teachers at that school shall not exceed 20 students in kindergarten and grade one, and shall not exceed 25 students when averaged among grades two, three, four, five and six.

(8) Each school district or charter school shall report to the department the size and

composition of classes subsequent to the 40th day report and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the school district's or charter school's budget by the secretary.

(9) The department shall report to the legislative education study committee by November 30 of each year regarding each school district's or charter school's ability to meet class load requirements imposed by law.

(10) Notwithstanding the provisions of Paragraph (6) of Subsection H of 6.29.1.9 NMAC, the secretary may waive the individual class load and teaching load requirements established in this section upon demonstration of a viable alternative curricular plan and a finding by the department that the plan is in the best interest of the school district or charter school; and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee. Requests for alternative curricular plans shall be submitted using the department's *collaborative school improvement programs waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request.

I. Student/staff caseloads in gifted and special education.

(1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language pathologist for special education services or speech-only services, in which properly licensed special

education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal amount of special education. (A minimal amount of special education services shall not exceed ten percent of the school day/week.)

(2) The student/staff caseload shall not exceed 24:1 for a special education teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than fifty percent of the school day.)

(3) The student/staff caseload shall not exceed 15:1 for special education services in which properly licensed special education teachers provide services to students with disabilities whose IEPs require an extensive amount of special education for a portion of the school day as appropriate to implement the plan. (An extensive amount of special education services shall be provided fifty percent or more of the school day.)

(4) The student/staff caseload shall not exceed 8:1 for special education services in which a properly licensed professional provides services to students with disabilities whose IEPs require a maximum amount of special education. (A maximum amount of special education services shall be provided in an amount approaching a full school day.)

(5) The student/adult caseload shall not exceed 4:1 for center-based special education services in which one of the adults in the program is a properly licensed professional providing three- and four-year old children with the amount of special education needed to implement each child's IEP.

(6) The student/adult caseload shall not exceed 2:1 for center-based special education services in which three- and four-year old children have profound educational needs.

(7) Adequate student/staff caseloads shall be provided to appropriately address needs identified in the IEPs. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to students with disabilities under Part B of IDEA.

(8) If the student/staff caseload ratio exceeds the standards provided above, a request for waiver shall be submitted to the department for review and approval by the secretary.

~~J.~~ Length of school day and year:

(1) The district or charter school shall be in compliance with length of school day and year requirements as defined in Section 22-2-8.1 NMSA 1978. Within statutory requirements, the local board or governing body of a charter school determines the length of the school year, which includes equivalent hours. The local board or governing body of a charter school may delegate this authority to the superintendent or charter school administrator who, in turn, may delegate to others:

(2) Time for home visits/parent-teacher conferences. The local board or governing body of a charter school may designate a prescribed number of hours within the school year for home visits, to develop next-step plans for students or parent-teacher conferences up to the following maximum hours: kindergarten: 33 hours; grades 1 through 6: 22 hours; and grades 7 through 12: 12 hours.

(3) All students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(a) kindergarten, for half-day programs: two and one-half (2 and 1/2) hours per day or 450 hours per year; or, for full-day programs: five and one-half (5 and 1/2) hours per day or 990 hours per year;

(b) grades one through six: five and one-half (5 and 1/2) hours per day or 990 hours per year; and

(c) grades seven through twelve: six hours per day or 1,080 hours per year.

(4) Testing and assessments are considered part of instructional hours. One group of students cannot be dismissed while another group of students is testing, unless the students being dismissed already have approved extended-day plans in place for participating in the minimum instructional hours required.

(5) Dismissing students or closing school for staff development and participation in other non-instructional activities does not count toward the minimum instructional hours required. This time is to be built into a district and school schedule as an add-on. Early-release days may be built into a district or charter school calendar when the minimum instructional hours' requirement is otherwise being met.

(6) The student lunch period each day shall be at least 30 minutes. Lunch recess shall not be counted as part of the instructional day.

(7) Districts or charter schools may request a waiver from the secretary if the minimum length of school day requirement creates an undue hardship. Such requests shall be submitted using the department's *instructional hours waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of

applicable district or charter school policy and rationale for request. Requests shall provide documentation that the following conditions exist:

~~(a) the educational, societal or fiscal consequences of operating the minimum length of a school day/ year significantly impede the district's ability to provide a quality educational program; and~~

~~(b) the district or charter school has thoroughly investigated alternatives other than shortening the length of a school day/year in order to address the identified concerns.~~

~~(8) When an emergency arises and the emergency affects the required hours, the local superintendent or charter school administrator shall request in writing approval from the secretary regarding the manner in which the lost instructional hours will be made up, or requesting an exemption from the required instructional hours.]~~

~~[K] J.~~ Graduation requirements.

(1) The New Mexico high school system of assessments. The district or charter school shall be in compliance with requirements as specified in Section 22-13-1.1 NMSA 1978 and Subsection L of Section 66-7-506 NMSA 1978 (offering driver education, service learning and financial literacy as electives). The department specifies that students shall meet all graduation requirements [in order] to be eligible to receive a diploma. This includes the requirement of passing the high school system of assessments.

(2) The next step plan. Each student shall complete a next step plan for each high school year. For students with individualized education programs (IEPs), the transition plan substitutes for the next step plan. The next step plan requires that:

(a) each grade-level next step plan shall be completed within the last 60 school days of the preceding school year (for example, the 9th grade interim next

step plan shall be made before the end of the 8th grade year);

(b) only one grade-level next step plan shall be completed for a student each year;

(c) the development of the next step plan shall include the student, the student's parent or guardian and the advisor, but may include additional relevant parties;

(d) to write the next step plan, the advisor shall consult with the student and the student's parent or guardian on academic choices that target the student's interests and meet graduation requirements;

(e) the next step plan shall address career clusters in career and technical education, academic support and study skills, extracurricular experiences and out-of-school activities, exposure to post-secondary education and career options, family and social supports, assessments, credentials and any other relevant information; as part of the next step plan, the advisor shall disseminate and share information concerning advanced placement, honors, dual-credit and distance learning programs;

(f) the next step plan determines whether or not the student is on track with graduation requirements; the plan ensures that gaps in courses and test-taking are filled;

(g) the next step plan may be made in large-group, small-group or individual student settings;

(h) the advisor has the responsibility to see that the student is reasonably informed about curricular and course options, opportunities available that lead to broader post-high school options, and alternative opportunities available if the student does not finish a planned curriculum;

(i) the next step plan shall be signed by the student, the student's parent or guardian and the advisor;

(j) the completed next step plan shall be filed with the school principal or charter school administrator and only the final next step plan shall be filed in the student's cumulative file upon graduation;

(k) during the development of the student's next step plan for the eleventh grade, a plan allowing the student to complete a fourth mathematics course other than algebra 2 may be developed using data from the student's high school short-cycle assessments, the student's most recent system of assessments score in mathematics, other relevant assessment scores and coursework grades and educational career plans recorded in the student's next step plan;

(l) for the student to take four mathematics courses that contain a lesser content than that recommended for inclusion in algebra 2 or its equivalent, the student's parent shall provide written, signed permission on the student's next step plan; parental signature on the next step plan for the eleventh grade indicating the mathematics courses the student will take shall serve as the required signed permission.

(3) Transfer of credits. For students enrolling or re-enrolling in public schools, local school boards or governing bodies of charter schools will establish policies as follows.

(a) Credits shall be transferable with no loss of value between schools that are accredited by a state board of education in the United States, United States territories, Puerto Rico, the freely associated states and outlying areas of the United States, department of defense schools or other authorized body.

(b) Policies of the local school board or the governing body of a charter school, for students transferring from home schools, private schools, or foreign schools to the public schools,

will be in accordance with Subsection D of Section 22-1-4 NMSA 1978.

(c)

Acceptance of credits earned through correspondence extension study, foreign study, home study courses or non-department accredited, non-public schools is determined by the policy of the local school board or the governing body of a charter school.

(4)

Correspondence courses. For students currently enrolled in public schools, local school boards or governing bodies of charter schools will establish policies addressing the use of correspondence courses to meet graduation requirements.

(a)

Policies should be based on the following circumstances:

(i)

when road conditions or distance from access to school transportation prohibit regular daily attendance;

(ii)

when a student cannot attend school due to prolonged illness or recovery from injury, as part of the individual plan to address the student's educational needs developed in accordance with applicable state and federal regulations governing the education of students with disabilities;

(iii)

when the occupation of the parent or student requires prolonged periods of time away from the school district;

(iv)

when a student is housed in a long-term residential facility; or

(v)

to enhance or supplement graduation requirements based on a student's individual need(s).

(b)

Schools counting credit for correspondence courses for enrolled students shall ensure that such courses are part of the student's individual plan for graduation. If applicable, such courses are part of the IEP developed in accordance with applicable state and federal regulations governing the education of students with disabilities, and schools shall ensure that assistance is available to students as needed to

complete the correspondence courses.

(c)

Correspondence courses used to provide graduation credit to currently enrolled students shall be provided by:

(i)

a school accredited by the state board of education of the state in which the school is located, or

(ii)

a college or university with regional accreditation to perform such function.

(5) Dual credit

program. "Dual credit program" means a program that allows high school students to enroll in college-level courses offered by public post-secondary educational institutions that may be academic or career-technical in nature, but may not be remedial or developmental, and through which students can simultaneously earn credit toward high school graduation and a post-secondary degree or certificate. (Refer to 6.30.7.6 NMAC.)

(6) Distance

learning courses. "Distance learning" means the technology and the educational process used to provide instruction for credit or for a grade when the course provider and the distance-learning student are not necessarily physically present at the same time or place. Distance learning does not include educational software that utilizes only on-site teaching. Any program involving distance learning shall be governed by the department's distance learning rule, found at 6.30.8 NMAC.

(7)

Standardized grading system. A standardized grading system is required to be implemented by each district and charter school. The system shall include the following components:

(a)

a written report to parents regarding the performance of their children tested with the New Mexico standards-based assessments;

(b)

for grades 3-12, a standardized alphabetic grading system, based on

the 4.0 scale (i.e., a minimum of 4.0 or higher=A, 3.0=B, 2.0=C, 1.0=D); certain courses may be assigned a weighted score according to local policy;

(c)

alignment of all district and school curriculum to the New Mexico content standards with benchmarks and performance standards; and

(d)

all school report cards shall include the results of standards-based assessments and may augment the standardized grading system with a narrative or other method that measures a student's academic, social, behavioral or other skills.

(8) Final

examination. A final examination shall be administered to all students in all courses offered for credit.

(9) Credit.

Credit cannot be earned twice for the same course.

(10) Other

elective credit. Elective credit courses shall meet all New Mexico content standards with benchmarks and performance standards, and shall:

(a)

include a written, sequential curriculum;

(b)

be taught by an instructor who is appropriately licensed and endorsed to teach the course;

(c)

include a final examination; and

(d)

be reviewed and approved by the local board of education or governing body of a charter school.

(11) Alternative

credit. Local districts, charter schools or state educational institutions may design elective courses, known as alternative credit courses, to satisfy any of the specified credits required for graduation.

(a)

The process includes:

(i)

review of the licensure and endorsements of affected staff;

(ii)

review of required course content standards with benchmarks and

performance standards with the proposed elective course, and summary of alignment between the two courses;

(iii) determination of the amount of credit that will be generated;

(iv) publication of information regarding what course is available for alternative credit and identification of course number;

(v) inclusion of the availability of alternative credit in all next-step plans;

(vi) note on the student transcript that the graduation requirement course was completed using the named alternative credit course;

(vii) review and preliminary approval by the local board of education or governing body of a charter school.

(b) Once the process has been completed, the district superintendent or administrator of a charter school or state educational institution shall submit a written request, with appropriate documentation, to the secretary for approval.

(12) Excuses from physical education. The physical education graduation requirement may be waived by the secretary, based upon a request by the local superintendent or charter school administrator with documentation from a licensed medical doctor, osteopath, certified nurse practitioner with prescriptive authority or chiropractor, that the student has a permanent or chronic condition that does not permit physical activity. Such requests shall be submitted using the department's *physical education waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable

district or charter school policy and, for each student for whom the waiver is requested: name, school and year of student graduation, district affirmation that it possesses required medical documentation, name and email address of school principal and rationale for the request. A student receiving special education supports and services pursuant to the IDEA or Section 504 of the federal Rehabilitation Act may also be eligible to request this waiver, when appropriate medical documentation is provided in the IEP.

(13) Graduation requirements for issuance of a conditional certificate of transition or a diploma for students with an IEP. The development of a program of study and the granting of a diploma, or use of a conditional certificate of transition in the form of a continuing or transition individualized educational program (IEP) for students receiving special education services, includes the following governing principles:

(a) The IEP team is responsible for determining whether the student has completed a planned program of study based on the student's strengths, interests, preferences, identified educational and functional needs and long-term educational or occupational goals, making the student eligible to receive either a diploma or a conditional certificate of transition. A conditional certificate of transition allows the student to participate in graduation activities. If a student receives a conditional certificate of transition, the student shall then return to the program specified in the IEP to complete the student's secondary program and meet the requirements for a diploma. Receipt of a conditional certificate of transition shall not end a student's right to FAPE. In addition, all IEPs shall provide a description of how the student's progress toward meeting annual goals and graduation requirements will be measured, and at what intervals progress will be reported to parents or guardians. A student shall be awarded a diploma

upon completion of a planned program of study that meets the requirements of Paragraph (b).

(b) A student may be awarded a diploma (Section 22-13-1.1 NMSA 1978) [~~using any of~~] through the following programs of study described in Items (i) through (iii). All IEP team discussion points and decisions identified herein, including the identification of the student's program of study and any student or parent proposals accepted or rejected by the IEP team (if the student has not reached the age of majority), shall be documented on the student's IEP and in the prior written notice (PWN) of proposed action.

(i) A standard program of study is based upon meeting or exceeding all requirements for graduation based on the New Mexico standards for excellence (Subsection [K] J of 6.29.1.9 NMAC) with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall pass all sections of the current state graduation examination(s) administered pursuant to Subsection I of Section 22-13-1.1 NMSA 1978 under standard administration or with state-approved accommodations and shall meet all other standard graduation requirements of the district. A diploma obtained through the standard program of study is considered a "regular high school diploma" as defined in 34 C.F.R. § 300.102(a)(3)(iv). Pursuant to 34 C.F.R. § 300.102(a)(3)(i), students with disabilities who graduate from high school with a regular diploma through the standard program of study are no longer entitled to FAPE or continued receipt of special education and related services.

(ii) A [~~career readiness alternative~~] modified program of study is developed to provide relevance and is based on a student's career interest as it relates to one of the career clusters, with or without reasonable accommodations of delivery and assessment methods. In addition,

a student shall take the current state ~~[graduation examination(s) administered pursuant to Subsection K of Section 22-13-1.1 NMSA 1978]~~ standards-based assessments required for high school students, under standard administration or with state-approved accommodations as determined by the SEA. Once the student has attempted the state [graduation examination and is unable to meet the minimum requirements on all sections of the assessments and achieve a level of competency, the IEP team can set the minimum passing scores] required high school assessments, the student shall achieve a level of competency pre-determined by the student's IEP team on the current state-approved demonstration of competency options for graduation. The student shall earn at least the minimum number of credits required by the district or charter school for graduation through standard or alternative courses that address the employability and career development standards with benchmarks and performance standards, as determined by the IEP team. Course work shall include a minimum of four units of career development opportunities and learning experiences that may include any of the following: career readiness and vocational course work, work experience, community-based instruction, student service learning, job shadowing, mentoring or entrepreneurship related to the student's occupational choices. Credits for work experience shall be related to the program of study that the school offers and specific to the district's ability to offer work experience or community-based instruction credits. The student shall achieve competency in all areas of the employability and career development standards with benchmarks and performance standards, as determined by the IEP team and the student's interest as it relates to the career clusters. The program of study shall address the New Mexico content standards with benchmarks and performance standards in other subject areas as

appropriate. A diploma obtained through the modified program of study is not considered a "regular high school diploma" as defined in 34 C.F.R. § 300.102(a)(3)(iv). Pursuant to 34 C.F.R. § 300.102(a)(3)(ii), a student's right to FAPE does not end upon obtaining an alternative diploma through the modified program of study and a student may continue to receive special education and related services until student either meets the requirements to obtain a diploma through the standard program of study or until the end of the academic year in which the student becomes 22 years of age.

(iii)

An ability program of study was developed for students who have a significant cognitive disability or severe mental health issues. The IEP goals and functional curriculum course work shall be based on the New Mexico standards with benchmarks and performance standards and employability and career development standards with benchmarks and performance standards. Students in this program of study shall earn the minimum number of credits or be provided equivalent educational opportunities required by the district or charter school, with course work individualized to meet the unique needs of the student through support of the IEP. In addition, a student shall take either the current state ~~[graduation examination(s) administered pursuant to Subsection K of Section 22-13-1.1 NMSA 1978]~~ standards-based assessments required for high school students, under standard administration or with state-approved accommodations, or the state-approved alternate assessment. Once the student has participated in the state-required high school assessments, [The] the student shall achieve a level of competency pre-determined by the student's IEP team on the current [graduation examination or the state-approved alternate assessment] state-approved demonstration of competency options for graduation and meet all other graduation requirements established

by the IEP team. A diploma obtained through the ability program of study is not considered a "regular high school diploma" as defined in 34 C.F.R. § 300.102(a)(3)(iv). Pursuant to 34 C.F.R. § 300.102(a)(3)(ii), a student's right to FAPE does not end upon obtaining a diploma through the ability program of study and a student may continue to receive special education and related services until student either meets the requirements to obtain a diploma through the standard program of study or until the end of the academic year in which the student becomes 22 years of age.

(c)

~~[The new requirements for the career readiness and ability pathways become effective beginning with students graduating in 2009.] Students receiving a diploma through any of the programs of study are permitted to participate in all graduation activities.~~

(d)

Any special education student who obtains a diploma through the modified or ability programs of study may choose to exit high school after receiving the diploma but continues to have an entitlement to FAPE. A student may elect to resume their high school education at their school district of residence until student either meets the requirements to obtain a diploma through the standard program of study or until the end of the academic year in which the student becomes 22 years of age.

[(d)] (e)

By the end of the eighth grade, each student's IEP shall contain a proposed individual program of study for grades nine through 12. The program of study shall identify by name all course options the student may take and shall align with the student's long-range measurable post-secondary goals and transition services to facilitate a smooth transition to high school and beyond. This program of study shall be reviewed on an annual basis and adjusted to address the student's strengths, interests, preferences and areas of identified educational and functional needs. The IEP team shall document on the IEP the student's progress toward

earning required graduation credits and passing the current graduation examination.

(f)

A district or charter school shall provide each student, who has an IEP and who graduates or reaches the maximum age for special education services, a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting post-secondary goals.

(g)

Students graduating on the standard program of study shall meet the state's minimum requirements on all sections of the graduation examination. IEP teams shall document a plan of action on the IEP and the PWN to be carried out by both the student and the district or charter school, to ensure that the student will pass all sections of the graduation examination.

(h)

To establish a level of proficiency on the current graduation examination or the state-approved alternate assessment for students on a modified program of study or ability program of study, IEP teams shall review the student's performance on the first attempt and establish a targeted proficiency on all sections that are below the state's minimum requirement. For those students who meet participation criteria for the New Mexico alternate assessment, IEP teams shall set targeted levels of proficiency based upon previous performance on the test. If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, the IEP team shall arrange for the student to participate in the general graduation examination and shall identify appropriate accommodations that the student may require. IEP teams shall document the targeted levels of proficiency on the IEP and the PWN, outlining the plan of action to be taken by both the student and the district or charter school to ensure that the student will meet the targeted levels of proficiency. Districts or

charter schools may submit a written request for a waiver to the secretary in cases where a student has medical or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the superintendent or charter school administrator and shall include documentation of the medical or mental health issues.

(i)

Changes in programs of study.

(i)

Departures from the standard program of study for students receiving special education services and supports shall be considered in the order of the options listed in Subparagraph (b) of Paragraph (13) of Subsection [K] J of 6.29.1.9 NMAC. Any modified program of study may depart from a standard program of study only so far as is necessary to meet an individual student's educational needs as determined by the IEP team. Districts and charter schools are obligated to meet the requirements of IDEA to provide students with IEPs on any one of the three programs of study, and access to the general curriculum in the least restrictive environment. When an alternative program of study is developed, a building administrator or designee who has knowledge about the student shall be a member of the IEP team

(ii)

Districts and charter schools shall document changes from the standard program of study on the PWN. IEP teams shall identify the reasons for changing the student's program of study, shall provide parents with clear concise explanations of the modified or ability programs of study, shall notify parents and students of the potential consequences that may limit the student's post-secondary options, and shall make required changes to the IEP and course of study, to ensure that the student meets the requirements of that program of study.

(iii)

The IEP team shall not change the program of study for a student

entering the final year of high school (not the cohort with which the student entered high school) from the standard program of study to the modified program of study, nor from the modified program of study to the ability program of study, after the 20th school day of the final year of high school. IEP teams may change a student's program of study from the ability program of study to the modified program of study, or from the modified program of study to the standard program of study, if the student meets the graduation requirements of that program of study and if the change is made and documented appropriately in a revised IEP and PWN by a properly constituted IEP team in a properly convened meeting.

(i)

A student who receives special education services may be granted a conditional certificate of transition in the form of a continuing or transition IEP when:

(i)

the IEP team provides sufficient documentation and justification that the issuance of a conditional certificate of transition for an individual student is warranted;

(ii)

prior to the student's projected graduation date, the IEP team provides a PWN stating that the student will receive a conditional certificate of transition;

(iii)

the district or charter school ensures that a conditional certificate of transition is not a program of study and does not end the student's right to a FAPE;

(iv)

the district or charter school ensures that a conditional certificate of transition entitles a student who has attended four years or more of high school to participate in graduation activities, and requires that the student continue receiving special education supports and services needed to obtain the high school diploma;

(v) the district or charter school ensures that, prior to receiving a conditional certificate of transition, the student has a continuing or transition IEP;

(vi) the student's continuing or transition IEP outlines measures, resources, and specific responsibilities for both the student and the district or charter school to ensure that the student receives a diploma.

(f) (k) A student who receives a certificate of transition but does not return to complete the program of study as outlined in the continuing or transition IEP will not be considered [as] a dropout.

(h) (l) A student who receives a conditional certificate of transition is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student becomes 22 years of age.

(t) (m) Graduation plans shall be a part of all IEPs:

(i) by the end of eighth grade, or by the time the student turns 14 years of age, and concurrent with the development of the student's transition plan in accordance with federal regulations at 34 CFR 300.320;

(ii) when a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; or

(iii) when evaluations warrant the need for a [modified] different program of study at any time after development of an initial graduation plan.

(m) (n) Graduation plans shall be a part of all of all IEPs and annual reviews and shall follow the student in all educational settings. Receiving institutions that fall under the department's jurisdiction will recognize these graduation plans, subject to revision by new IEP teams, if appropriate to meet a student's changing needs.

(m) (o) At the exit IEP meeting, the team shall review the student's transition plan, and shall confirm and document that all state and district requirements for graduation under the final IEP have been satisfied.

A building administrator who has knowledge about the student shall be a member of this team, and shall sign specifically to verify and accept completed graduation plans, goals and objectives pursuant to (i) - (iii) of Subparagraph (b) of Paragraph (13) of Subsection [K] J of 6.29.1.9 NMAC, or plans for a conditional certificate of transition with a continuing or transition IEP, pursuant to Subparagraph (i) of Paragraph (13) of Subsection [K] J of 6.29.1.9 NMAC. The IEP team shall ensure that the student has current and relevant evaluations, reports, or other documentation necessary to support a smooth and effective transition to post-secondary services for a student who will graduate on one of the three programs of study. The school shall arrange for any necessary information to be provided at no cost to the students or parents. The school shall submit a list of students who will receive the diploma through a [career-readiness] modified or ability program of study to the local superintendent or charter school administrator, using the students' identification numbers.

This list shall be totaled and submitted to the local school board or governing body of a charter school. This information shall be treated as confidential in accordance with [the] FERPA.

(o) (p) Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, the student shall be allowed to complete the school year. If a student becomes 22 prior to the first day of the school year, the student is no longer eligible to receive special education services.

(p) —
The receipt of a diploma terminates the service eligibility of students with special education needs.]

(q) All diplomas awarded by a school district or charter school shall be identical in appearance and content [~~and effect~~], except that symbols or notations may be added to individual students' diplomas to reflect official school honors or awards earned by students.

(14) Future changes in graduation requirements. Refer to 6.29.1.13 NMAC.

(H) K. Statewide accountability program.

(1) Educational accountability. The local board of education or charter school governing body and the district superintendent or charter school administrator are responsible for providing educational services that support student learning. Educational accountability has two mechanisms and three indicators which impact the approval of the district's budget and accreditation status. The accountability mechanisms are accreditation and the program/budget review process. These two mechanisms shall align directly with the district or charter school's [EPSS] Education Plan. The indicators are community representation, local accountability indicators and statewide accountability indicators.

(2) Accountability mechanisms.

(a) Accreditation. Accreditation will be conducted in accordance with Subsection F of Section 22-2-2 NMSA 1978. Verification of the district or charter school's [EPSS] Education Plan and student progress will occur on a regular basis. State and federal regulations which fall within the scope of accreditation will also be monitored.

(b) Program/budget review and approval. The program/budget review and approval process, including assessment and evaluation, occurs annually. Its purpose is to link the district or charter school's program needs directly with budgetary resources. In order for a district or charter school to obtain an approved budget, the district shall:

<p>document the local board or charter school governing body’s determination of needs as defined in its [EPSS] <u>Education Plan</u> (Section 22-8-18 NMSA 1978);</p>	<p>(i) identified [EPSS] <u>NM School DASH process</u> [<u>goals/focus-areas-(performance indicators)</u>] <u>goals and desired outcomes</u>;</p>	<p>special provisions and requirements for the assessment of English language learners and students with IEPs.</p>
<p>document minimum budget requirements (Section 22-8-9 NMSA 1978);</p>	<p>(ii) be included as an integral part of the accreditation and program/budget review processes; and</p>	<p>(a) English language learners. Students who have limited English language skills (i.e., students who are “English language learners”) as determined by the department-approved English language proficiency screening assessment shall participate in the statewide assessment program. The following considerations specify how assessment shall be conducted.</p>
<p>document parent involvement in budget preparation (Section 22-8-11 NMSA 1978);</p>	<p>(iii) use any other indicators the district or charter school shall choose for its students.</p>	<p>(i) Length of enrollment in U.S. schools. The options for participation of English language learners in the New Mexico standards-based assessment program depend on the length of time that the student has been enrolled in U.S. public schools. For students who are new to U.S. schools, the following applies: Students who are enrolled for the first year in a U.S. school may receive an exemption from the system of assessments for English language arts, including all subtests therein. In all other content areas of the system of assessments, the student shall participate in the Spanish-language version of the assessment (if available and appropriate) or in the English-language version with accommodations provided, if they are determined to be appropriate by the local school’s team, as described in (iii) of Subparagraph (a) of Paragraph (2) of Subsection [M] L of 6.29.1.9 NMAC. For the subtests other than reading, the test completion status shall be student tested all sessions, and the types of accommodations that are provided, if any, shall be indicated in the student information system. Students who have been in U.S. schools for at least 12 months and less than three consecutive years shall participate in the statewide assessment program in one of three ways: the student may participate in the standard administration of the English-language version of the assessment without accommodations; the student may participate in the English-language version of the assessment with appropriate</p>
<p>complete the annual program/budget questionnaire; and</p>	<p>(iv) Statewide student performance indicators. Statewide student performance indicators shall:</p>	<p>(ii) measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;</p>
<p>comply with requirements specified in Section 22-8-5 NMSA 1978.</p>	<p>(v) be included as an integral part of the accreditation and program/budget review processes;</p>	<p>(iii) communicate clearly to parents and the general public the students’ progress toward meeting the goals established by the district and school, or charter school; and</p>
<p>(3) Accountability indicators.</p>	<p>(i) be part of the local [EPSS] <u>Education Plan</u> evaluation and <u>NM School DASH monitoring</u>;</p>	<p>(iv) describe performance levels across the grade levels and across the curriculum.</p>
<p>(a) Community representation. Community representatives shall be involved in the budget preparation process, the [EPSS] <u>Education Plan</u> process, the [EPSS] <u>NM School DASH process</u>, <u>Education Plan</u> evaluation (including the establishment of local student performance indicators) and the accreditation process. Community representatives include parents, students and other community members who reflect the composition of the student population. Evidence shall be provided to verify different forms of representation.</p>	<p>(ii) measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;</p>	<p>(v) [M] L. Statewide student assessment system. As stated in Section 22-2-8.13 NMSA 1978, students’ knowledge and skills are assessed and evaluated though the New Mexico content standards with benchmarks and performance standards, the system of assessments, and local measures.</p>
<p>(b) Local student performance indicators. Local student performance indicators shall:</p>	<p>(i) be identified by the local school district or charter school in conjunction with students, parents, community members and businesses;</p>	<p>(1) The statewide student assessment system. All public-school students, with the exceptions indicated below, shall participate in the system of assessments, which includes standards-based assessments in grades 3 through 8 and high school.</p>
<p>(i) be identified by the local school district or charter school in conjunction with students, parents, community members and businesses;</p>	<p>(ii) be part of the local [EPSS] <u>Education Plan</u> evaluation;</p>	<p>(2) Exceptions. Exceptions include</p>
<p>(ii) measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;</p>	<p>(iii) measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;</p>	<p>(iii) measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;</p>
<p>(iv) demonstrate student progress toward</p>	<p>(iv) demonstrate student progress toward</p>	<p>(iv) demonstrate student progress toward</p>

accommodations; or the student may participate in the standard administration of the Spanish-language version of the assessment, where available and appropriate.

(ii)

Waivers for home language assessment. Students who have been in U.S. schools for three or more consecutive years shall participate in the English-language version of the assessment with or without allowable accommodations unless a request based on the determination of the local education agency to continue the testing of the student in the home language of Spanish and the request is approved by the secretary. If, after three consecutive years in U.S. schools, the district or charter school determines (on a case-by-case basis) that academic assessments in the student's home language of Spanish would yield more accurate and reliable information about the student's knowledge of a subject, the district or charter school may request a waiver from the secretary to continue to assess the student in the home language of Spanish. Approved waivers are effective for the current year only; annual waiver requests may be approved for a maximum of two years. The waiver request shall be submitted to the secretary for approval at least three months before the assessment, by the district's superintendent or the charter school administrator. The request shall include: student name, student state identification number, school in which the student is currently enrolled, student's grade level, student's most recent department-approved English language proficiency, assessment date and overall composite score, length of enrollment in U.S. schools, an indication of whether this is the first or second waiver request for the student, the reason or justification for the waiver request, and names of the school team members involved in the decision to request the waiver.

(iii)

Accommodations. Districts and charter schools shall provide accommodations to English language learners after consideration

of their appropriateness for the individual student. To determine the appropriateness of allowing accommodations, the district or charter school shall consider the student's level of proficiency in all domains of language (listening, speaking, reading, writing and comprehension) and the nature of the school's instructional program. The district or charter school shall ensure that students do not receive accommodations without current justification supported by data. District and school staff may obtain the technical assistance on procedures for accommodations from the department's district test coordinator's manual or from the department. Each school shall utilize a team to review individual student progress in order to determine accommodations. For students being served on an individualized education program (IEP) or Section 504 Plan, those teams (IEP or Section 504) will respectively determine appropriate test accommodations. For all other students, the school may use its student assistance team (SAT) or form another school-based team for this purpose, but the team shall be comprised of at least three school staff, including staff who are familiar with the student's abilities and language needs, standardized test procedures and valid ELL test accommodations. Team members may include: the student's bilingual multicultural education- or TESOL- endorsed teacher, the bilingual multicultural education program coordinator, the student's other teacher(s), administrators or school test coordinators, or the school counselor. The student's parent or guardian, the student and other staff members may be also included, as appropriate. The team shall base its decisions about appropriate accommodations on the following: annual review of the student's progress in attaining English language proficiency, student's current English language proficiency, including the student's experience and time in U. S. schools, student's expected date for exiting English language

learner accommodations, student's familiarity with the accommodation under consideration, the primary language of instruction used in the content area to be assessed and the length of time that the student has received instruction in that language, and the student's grade level. Written documentation of accommodation decisions made by the team shall be stored in the student's cumulative file and shall be reported to the department's bureau of assessment and evaluation.

(b)

Students with IEPs. Students with IEPs who receive special education and related services shall participate in all statewide and district-wide assessments of student achievement or in state-approved alternate assessments. Pursuant to Subsection E of 6.31.2.11 NMAC, 34 CFR 300.320 (a)(2)(ii) and 34 CFR 300.320(a)(6), the IEPs for such students shall specify which assessments each student will participate in and what, if any, accommodations or modifications in administration are needed to enable the student to participate. The IEPs for students who will not participate in a particular statewide or district-wide assessment shall meet state-approved criteria, methods and instruments.

(c)

Waiver of the high school system of assessments (graduation requirement assessment).

(i)

With the approval of the local board of education or charter school governing body, the local superintendent or charter school administrator may request written approval from the secretary to award a diploma to a student who has not passed the high school system of assessments. The district or charter school shall document student attainment of required competencies through an alternative assessment procedure and shall submit such a request using the department's *high school system of assessments waiver request* form. This form shall include: name of superintendent; district/

school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; statement of applicable district or charter school policy, list of students for whom the waiver request is being made including: student name, school, date of board approval, and statement of whether or not competencies are documented through an alternative assessment; and rationale for request.

(ii)

With appropriate documentation, a passing score on another state's graduation requirement assessment shall substitute for the high school system of assessments.

[N] M. Indigent identification and guidelines.

(1) A student who has been deemed eligible for free or reduced-price school meals, or a student who has been identified by the children, youth and families department as being in the custody of the state, shall be deemed indigent for the purposes of remediation programs and damage of instructional materials, as discussed in Sections 22-2C-6 and 22-15-10 NMSA 1978.

(2) A parent or guardian of a student who has not applied for free or reduced-price school meals shall be notified in writing by the local school board or governing body of a charter school of the availability of remediation at no charge upon an eligibility determination for free or reduced-price school meals.

[O] N. Emergency drills and practiced evacuations.

(1) Emergency drills shall be conducted in each public school and private school in the state, as follows:

(a) at least once per week during the first four weeks of the school year;

(i) one of these drills shall be a shelter-in-place drill, which includes preparation to respond to an active shooter;

(ii) one of these drills shall be an evacuation drill;

(iii) two of these drills shall be fire drills;

(b) during the rest of the school year, each school shall conduct at least four more emergency drills, at least two of which shall be fire drills;

(c) in locations where a fire department is maintained, a member of the fire department shall be requested to be in attendance during the emergency drills for the purpose of giving instruction and constructive criticism;

(d) it shall be the responsibility of the person in charge of a school to carry out the provisions related to emergency drills.

(2) Requirements to comply and penalties for non-compliance:

(a) It shall be the responsibility of the superintendent of a school district, a charter school administrator or private school counterpart(s) to ensure that each school under the person's authority follows the requirements set forth in Subsection [O] N of 6.29.1.9 NMAC.

(b) In the event that the person responsible for complying with Subsection [O] N of 6.29.1.9 NMAC fails or refuses to comply with this subsection, the department may, in the case of a public school, take any action designed to ensure prompt corrective action or future compliance, including reporting the non-compliance to either the state fire marshal or to a local fire department. In the case of a private school, the department will report the non-compliance to either the state fire marshal or to a local fire department and may consider adverse licensure action.

(c) Failure or refusal to comply with the requirements in Subsection [O] N of 6.29.1.9 NMAC for holding emergency drills shall constitute grounds to suspend or revoke the license of the person responsible for compliance. The due process procedures under the Uniform Licensing Act (Sections 61-1-1

through 61-1-31 NMSA 1978) shall apply.

[P] Q. School facilities and grounds. Pursuant to Subsection C of 6.29.1.9 NMAC (*Duties of the Superintendent*); Subsection D of 6.12.6.8 NMAC (*School District Wellness Policy*); and 6.19.3 NMAC (*Unsafe School Choice Option*), each school district or charter school shall ensure that all buildings, facilities and grounds provide a safe and orderly environment for public use; i.e., that they shall be:

(1) safe, healthy, orderly, clean and in good repair;

(2) in compliance with the Americans with Disabilities Act-Part III and state fire marshal regulations, Sections 59A-52-1 through 59A-52-25 NMSA 1978;

(3) safe for conducting experiments and school projects in all school laboratories and shops, as established in written school safety procedures which are reviewed annually; these procedures include, but are not limited to:

(a) personal protective equipment;

(b) adequate ventilation and electrical circuitry;

(c) material safety data sheets;

(d) body and eye washes; and

(e) training appropriate for each teaching situation;

(4) the maximum number of occupants in a laboratory or shop teaching space shall be based on the following:

(a) the number of work stations;

(b) the building and fire safety codes;

(c) the design of the laboratory or shop teaching facility;

(d) appropriate supervision and the special needs of students; and

(e) all applicable OSHA regulations;

(5) appropriate procedures for the storing, handling and removal of toxic or dangerous substances shall be established and implemented; all school programs (including those areas noted above and custodial areas, art room, library and cafeteria) shall comply with standard safety practices and all applicable state and federal regulations;

(6) use of pesticides by districts and charter schools will be governed by the following standards:

(a) Definitions as used in this section: (i) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

(ii) "Pest" means any living organism injurious to other living organisms, except humans, viruses, bacteria or other microorganisms in or on other living organisms other than plants, which is declared to be a pest pursuant to the Pesticide Control Act, Sections 76-4-1 through 76-4-39 NMSA 1978.

(b) Districts and charter schools will develop procedures for the implementation of pest management with consideration for reducing the possible impact of pesticide use on human health and the environment, including people with special sensitivities to pesticides. Procedures will include, but are not limited to, the following:

(i) No pesticide may be applied to public school property and no pest control device, as defined in the New Mexico Pesticide Control Act, may be used on public school property except those pesticides and devices currently registered for legal use in the state by the New Mexico department of agriculture.

(ii) No pesticide may be applied to public school property except by those persons certified in the applicable category and currently licensed

by the New Mexico department of agriculture or by employees under their direct supervision.

(iii) Pesticides will only be applied in or on the outside of school buildings when a pest is present and will not be applied on a regular or calendar basis unless it is to treat an infestation and is a part of a pest management system being implemented to address a particular target pest. A pest is considered to be present when it is observed directly or can reasonably be expected to be present based on finding evidence, such as droppings, body parts, or damage that is typically done by the pest. This section of the regulation does not apply to pre-construction termite treatments or the use of outdoor herbicides.

(iv) Pesticides that are applied in a liquid, aerosolized or gaseous form through spraying, aerosol cans, bombs, fumigation or injections into the ground, foundation or plants will not be applied on public school property when students, staff or visitors are present, or may reasonably be expected to be present within 6 hours of the application. In emergency cases, where a pest infestation threatens the health or safety of the occupants of public school property, and which requires the immediate application of a pesticide to remediate, students, staff and other school occupants will be removed from the treatment area prior to the application. Small amounts of gel or liquid pesticides applied to cracks and crevices or baits used to treat pest infestation are exempt from this section.

(v) At the beginning of each year, and when new students register, schools will develop a list of parents and guardians who wish to be notified prior to pesticide application during the school year. These parents/guardians will be notified in writing prior to pesticide application. General notification of anticipated pesticide applications will occur by posting or dissemination of notices, by oral communication or other means of

communication. In emergency cases where a pest infestation threatens the health or safety of the occupants of public school property, no pre-notification is required. Immediately following the application of a pesticide in emergency cases, signs will be posted indicating an application was made.

(vi) Written records of pesticide applications will be kept for three years at each school site and be available upon request to parents, guardians, students, teachers and staff.

(vii) If any part of Paragraph (6) of Subsection [P] Q of 6.29.1.9 NMAC is found to be in conflict with the provisions of the Pesticide Control Act, the remainder of the regulation will remain in full force and effect.

[Q] P. School district budgeting. Section 22-8-4 NMSA 1978 requires the department to prescribe forms for, supervise and control the preparation of all budgets of all public schools and school districts, and to compile accurate information concerning public school finance and administration. Sections 22-8-5 through 22-8-12.1 NMSA 1978 set out specific budget preparation and submission requirements for the department, public schools and public school districts. Regulations governing budgeting and accounting for New Mexico public schools and school districts are set out in 6.20.2 NMAC.

[R] Q. Final course and other student grade changes. Any changes to students' course or other grades shall be governed by the state rule, "Final Course and Other Student Grade Changes" (6.30.10 NMAC).

[6.29.1.9 NMAC - Rp, 6.30.2.10 NMAC, 6/30/2009; A, 02/12/2010; A, 10/31/2011; A, 2/28/2017; A, 07/25/2017; A, 12/15/2020; A, 5/24/2022; A, 7/31/2023]

6.29.1.11 PROGRAM REQUIREMENTS:

A. Curriculum.
(1) Local curricula shall be aligned with the

applicable New Mexico content standards with benchmarks and performance standards. In accordance with Section 22-13-1.6 NMSA 1978, each school district shall align its curricula to meet the state standards for each grade level and subject area so that students who transfer between public schools within the school district receive the same educational opportunity within the same grade or subject area. ~~[Each school district's aligned grade level and subject area curricula shall be in place for mathematics by the 2009 school year.]~~

(2) Adopted instructional materials shall support the aligned local curricula. The state standards revision cycle, the local curriculum cycle and the instructional materials cycle shall be aligned and sequenced to provide standards-based curricula that are supported by aligned instructional materials. At the completion of each standards revision cycle, the standards-based state assessment program shall be reviewed to determine the need for realignment.

(3) All courses offered for credit shall have written, delivered, assessed and sequential curriculum.

(4) Written and delivered curricula shall be congruent, state what students should know and be able to do, and include an assessment process.

~~(5) [The curricula shall be assessed as part of the EPSS.~~

~~(6) The curricula shall support the [EPSS] Education Plan and NM School DASH.~~

B. Subject areas.
The district or charter school shall be in compliance with subject area requirements as specified in Section 22-13-1 NMSA 1978.

(1) The department shall require instruction in specific subject areas as provided in Paragraphs (2) through (7) of Subsection B of 6.29.1.11 NMAC. Any public school or school district failing to meet these minimum requirements shall not be accredited by the department.

(2) All kindergarten through third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics, and comprehension; and in mathematics. Students in kindergarten and first grades shall be screened and monitored for progress in reading and language arts skills, and students in second grade shall take diagnostic tests on reading and language arts skills.

(3) All first, second and third grade classes shall provide instruction in art, music and a language other than English, and instruction that meets content standards, benchmarks and performance standards shall be provided in science, social studies, physical education and health education.

(4) In fourth through eighth grades, instruction that meets academic content and performance standards shall be provided in the following subject areas:

- (a) reading and language arts skills, with an emphasis on writing and editing for at least one year and an emphasis on grammar and writing for at least one year;
- (b) mathematics;
- (c) language other than English;
- (d) communication skills;
- (e) science;
- (f) art;
- (g) music;
- (h) social studies;
- (i) New Mexico history;
- (j) United States history;
- (k) geography;
- (l) physical education; and

(m) health education.
(5) In eighth grade, algebra I shall be offered in regular classroom settings, through online courses or agreements with high schools.

(6) In fourth through eighth grades, school districts and charter schools shall offer electives that contribute to academic growth and skill development and provide career and technical education.

(7) In ninth through 12th grades, instruction that meets academic content and performance standards shall be provided in health education, including:

- (a) age-appropriate sexual abuse and assault awareness and prevention training that meets department standards developed in consultation with the federal centers for disease control and prevention that are based on evidence-based methods that have proved to be effective;
- (b) lifesaving skills training that follows nationally recognized guidelines for hands-on, compression only, psychomotor skills (skills that use hands-on practice to support cognitive learning) cardiopulmonary resuscitation training including:
 - (i) use of a course curriculum, which allows for demonstration of competency in performing cardiopulmonary resuscitation and associated skills;
 - (ii) training that conforms to the most recent, national, evidence-based guidelines established by the American heart association, the American red cross, or another nationally recognized, NM public education department-approved non-profit organization;
 - (iii) training to recognize the signs of a heart attack;
 - (iv) training on use of an automated external defibrillator; and

(v) training on how to perform the Heimlich maneuver for choking victims;

(c) lifesaving skills training that may use the following instructors if qualified to teach hands-on psychomotor skills cardiopulmonary resuscitation training:

(i) school nurses;

(ii) health teachers;

(iii) athletic department personnel as instructors; and

(iv) any qualified volunteers, as defined by 6.50.18.8 NMAC, providing training at no cost to the school district that the school district determines to be eligible to offer instruction as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC including, but not limited to, emergency medical technicians, paramedics, police officers, firefighters, representatives of the American heart association or the American red cross, or other similarly qualified individuals;

(d) training and instructional materials related to Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC in both English and Spanish to include:

(i) materials, equipment, and services that are needed as part of the instruction obtained on loan from state-recognized organizations, such as the New Mexico heart institute; and

(ii) materials, equipment, and services received by schools as in-kind donations; and

(e) combined instruction, whereby school districts and charter schools may work with other school districts and charter schools to provide the training or with a regional education cooperative to provide or facilitate the training.

(8) The requirements as prescribed in

Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC for health education shall not be required for students in grades nine through 12 who are enrolled in a virtual charter school.

(9) A school district or charter school may submit a waiver request to the department for the requirement as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC for health education for a student receiving special education supports and services pursuant to the IDEA or Section 504 of the federal Rehabilitation Act in grades nine through 12 with a disability as documented through an individualized education program (IEP) if the requirement as prescribed in Subparagraph (b) of Paragraph (7) of Subsection B of 6.29.1.11 NMAC cannot be reasonably met with accommodations for a given student.

(10) In every grade, inquiry-based laboratory components are at the core of the science program and shall be woven into every lesson and concept strand. For required science units in grades nine through twelve, "laboratory component" means an experience in the laboratory, classroom or the field that provides students with opportunities to interact directly with natural phenomena or with data collected by others using tools, materials, data collection techniques and models. Throughout the process, students shall have opportunities to design investigations, engage in scientific reasoning, manipulate equipment, record data, analyze results and discuss their findings.

The laboratory component comprises at least 40 per cent of the unit's instructional time. All science classes that include dissection activities as part of the curriculum shall provide virtual dissection techniques as alternative activities for any student who is opposed to real dissections for ethical, moral, cultural or religious reasons. Alternative techniques shall approximate the experience of real dissection activities as closely and appropriately as possible. A

virtual dissection technique means carrying out dissection activities using computer two-dimensional or three-dimensional simulations, videotape or videodisk simulations, take-apart anatomical models, photographs or anatomical atlases.

C. Bilingual multicultural education. Bilingual multicultural education programs shall be provided to meet the identified educational and linguistic needs of linguistically and culturally different students, including Native American children, and other students who may wish to participate, in grades K-12, with priority to be given to programs in grades K-3. These programs shall:

(1) provide services in accordance with the Bilingual Multicultural Education Act (Sections 22-23-1 through 6 NMSA 1978) and the Bilingual Multicultural Education Program Regulation (Sections 6.32.2.7 through 6.32.2.11 NMAC);

(2) be implemented in accordance with the identified needs of qualifying culturally and linguistically different students and ensure equal educational opportunities;

(3) be assessed as part of the [EPSS] Education Plan process; and

(4) support the local curriculum and [EPSS] Education Plan and NM School DASH.

D. Career and technical education (CTE). Career and technical education programs for both elementary and secondary levels shall:

(1) be in accordance with Section 22-14-1 through 22-14-30 NMSA 1978 and the Carl Perkins Act;

(2) provide exploratory and skill development program offerings;

(3) ensure students' mastery of the New Mexico career and technical education content standards with benchmarks and performance standards;

(4) include competency-based applied learning; and

~~(5) [be assessed as part of the EPSS process; and~~

~~(6)] support the local curriculum and the [EPSS] NM School DASH.~~

E. School health. School health programs provide opportunities for all students to develop healthy behaviors. Districts and charter schools shall provide or make provisions for school health programs that address the health needs of students and staff. Districts and charter schools shall provide the following programs: health education, physical education, health services and school counseling. Additional programs may include: nutrition, staff wellness, family-school-community partnerships, healthy environment and psychological services. These programs shall:

(1) be in accordance with Section 22-10A-34 and Section 24-5-1 through 24-5-6 NMSA 1978;

(2) provide education and skill development program offerings;

(3) provide community partnerships which help to achieve the goal of healthy students and staff; and

~~(4) [be assessed as part of the EPSS process; and~~

~~(5)] support the local curriculum [~~and EPSS~~] Education Plan, and NM School DASH.~~

F. Special education. Special education is specially designed instruction that is provided at no cost to parents to meet the unique needs of a student with a disability, as defined in the IDEA regulations (34 CFR Part 300 and state special education regulations (6.31.2 NMAC). Special education programs shall:

(1) provide specially designed instruction in career and technical education and

travel training for students whose IEPs require such services;

(2) provide instruction to students placed on homebound services as per their IEP; and

(3) provide instruction in state-supported educational programs, hospitals, institutions and other settings. As set forth in the state special education regulations at Paragraph (15) of Subsection C of 6.31.2.7 NMAC, special education may include speech-language pathology services consisting of specially-designed instruction that is provided to enable a student with a disability, as recognized under IDEA, to have access to the general curriculum and to meet the educational standards of the public agency that apply to all children;

~~(4) provide instruction, in accordance with Subsection D of Section 22-13-1 NMSA 1978, for the unique needs of gifted and talented students;~~

~~(5) (4) be assessed as part of the [EPSS] Education Plan process; and~~

~~(6) (5) support the local curriculum, Education Plan, and [EPSS] NM School DASH.~~

G. Supplemental programs. Programs which supplement, but do not replace, state operational programs may include, but are not limited to: Title I - Improving the Academic Achievement of the Disadvantaged; Title II - Preparing, Training and Recruiting High Quality Teachers and Principals; Title III - Language Instruction for Limited English Proficient and Immigrant Students; Title IV, Part A - Safe and Drug Free Schools and Communities; Title V - Promoting Informed Parental Choice and Innovative Programs; Title VI - Flexibility and Accountability; Title VII - Indian, Native Hawaiian and Alaska Native Education; Title VIII - Impact Aid Program; the Johnson-O'Malley Act; and Individuals with Disabilities Education Improvement Act (IDEA). Supplemental programs shall:

(1) provide services as required by federal laws and assurances, including Title VI of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act (EEOA) of 1974;

(2) be assessed as part of the [EPSS] Education Plan process; and

(3) support the local curriculum, Education Plan, and [EPSS] NM School DASH.

H. Support services. Districts and charter schools shall provide support service programs which strengthen the instructional program. Required support service programs are library media, school counseling and health services. Support services shall:

(1) have a written, delivered and assessed program, K-12;

(2) provide licensed staff to develop and supervise the program; and

~~(3) [be assessed as part of the EPSS process; and~~

~~(4)] support the local curriculum, Education Plan, and [EPSS] NM School DASH.~~

I. Technology in education. The Technology for Education Act establishes a fund and a system for equal distribution of funds based upon final funded student membership within each school district and charter school. The Technology for Education Act requires annual review and approval of each school district and charter school's educational technology plan, through which every school district and charter school reports to the department the fiscal distributions received, expenditures made and educational technology obtained by the district or charter school, and other related information. As districts and charter schools develop, refine and implement strategic long-range plans for utilizing educational technology, each plan shall:

(1) be in accordance with Section 22-15A-10 NMSA 1978; and

(2) [be assessed as part of the EPSS process; and

(3) support the local curriculum, Education Plan, and [EPSS] NM School DASH.

J. Gifted education.

Gifted education is specially designed instruction to meet the individual needs of gifted students pursuant to 6.31.3 NMAC. Gifted education programs shall:

(1) provide gifted students appropriate instruction in required subject areas, in accordance with Article 13 of Chapter 22 NMSA 1978;

(2) be assessed as part of the Education Plan process; and

(3) support the local curriculum, Education Plan, and NM School DASH.

[6.29.1.11 NMAC - Rp, 6.30.2.11 NMAC, 6/30/2009; A, 2/28/2017; A, 12/15/2020; A, 7/31/2023]

PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.31.2 NMAC, Sections 6, 7, 11, 12 and 13, effective July 31, 2023.

6.31.2.6 OBJECTIVE:

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

[6.31.2.6 NMAC - Rp, 6.31.2.6 NMAC, 7/14/2020; A, 7/31/2023]

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 high cost students with disabilities identified by LEAs pursuant to 34 CFR Sec. 300.704(c)(3)(i).

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

(19) “**SED**” means the special education division of the department.

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

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

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

(i) the service is provided to a child who has received appropriate tier I universal screening under Subsection D of 6.29.1.9 NMAC as it may be amended from time to time, before being properly evaluated under 34

CFR Secs. 300.301 through 300.306 and Subsection 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.] D.~~ The definitions in Subsection [E] D 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.] E.~~ The definitions in Subsection [F] E 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, 7/31/2023]

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 [K] J of 6.29.1.9 NMAC shall align with state standards with benchmarks when appropriate. In accordance with Paragraph (13) of Subsection J of 6.29.1.9 NMAC, alternative programs of study to obtain a diploma may be utilized 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, or diploma obtained through the modified and ability programs of study, does not end a child's right to FAPE pursuant to 34 CFR Sec. 300.102(a)(3)(ii).

(d)

Prior to the student's receipt of a conditional certificate of transition or graduation with a diploma obtained through the modified or ability programs of study, a public agency must issue a prior written notice indicating that the student continues to be entitled to receive FAPE until either student meets the requirements to obtain a diploma through the standard program of study or until the end of the academic year in which the student becomes 22 years of age.

(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 high school diploma obtained through the standard program of study 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 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, 7/31/2023]

6.31.2.12 [EDUCATIONAL SERVICES FOR GIFTED CHILDREN:

~~_____ A. _____ Evaluation procedures for gifted children.~~

~~_____ (1) _____ Each school district shall establish a child find procedure that includes a screening and referral process for students in public schools who may be gifted.~~

~~_____ (2) _____ Analysis of data. The identification of a student as gifted shall include documentation and analysis of data from multiple sources for subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking including:~~

~~_____ (a) _____ standardized measures, as specified in Subsection B of 6.31.2.12 NMAC, and~~

~~_____ (b) _____~~

~~information regarding the child's abilities from other sources, such as collections of work, audio/visual tapes, judgment of work by qualified individuals knowledgeable about the child's performance (e.g., artists, musicians, poets, and historians, etc.); interviews, or observations.~~

~~_____ (3) _____ The child's ability shall be assessed in all four areas specified in Subsection B of 6.31.2.12 NMAC.~~

~~_____ B. _____ Standard method for identification. Under the standard method for identification, students will be evaluated in the areas of intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking. A student who meets the criteria established in Subsection B of 6.31.2.12 NMAC for intellectual ability and also meets the criteria in one or more of the other areas will qualify for consideration of service. A properly constituted IEP team, including someone who has knowledge of gifted education, will determine if services are required to meet the child's educational needs.~~

~~_____ C. _____ Alternative method for identification.~~

~~_____ (1) _____ A school district may apply to the department to utilize an alternative protocol for all students. Eligibility of a student will then be determined by a properly administered and collected, department-approved alternative protocol designed to evaluate a student's intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking.~~

~~_____ (2) _____ If an accurate assessment of a child's ability may be affected by factors including cultural background, linguistic background, English language proficiency level, socioeconomic status, or disability condition(s), an alternative protocol as described in Paragraph (1) of Subsection E of 6.31.2.12 NMAC will be used in all school districts to determine the student's eligibility. The impact of these factors shall~~

~~be documented by the person(s) administering the alternative protocol.~~

~~_____ (3) _____ The student assistance team (SAT) process requirements will not apply to students who meet the criteria established by the alternative protocols. When a student's overall demonstrated abilities are very superior (as defined by the alternative protocol author), a properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs.~~

~~_____ D. _____ Applicability of rules to gifted children.~~

~~_____ (1) _____ All definitions, policies, procedures, assurances, procedural safeguards, and services identified in 6.31.2 NMAC for school-aged children with disabilities apply to school-aged gifted children within the educational jurisdiction of each local school district, including children in charter schools within the school district, except:~~

~~_____ (a) _____ the requirements of 6.31.2.8 NMAC through 6.31.2.10 NMAC;~~

~~_____ (b) _____ Subsections J, K, and L of 6.31.2.11 NMAC regarding child find, evaluations, and services for private school children with disabilities, children with disabilities in state-supported educational programs, children with disabilities in detention and correctional facilities, and children with disabilities who are schooled at home;~~

~~_____ (c) _____ the requirements of 34 CFR Secs. 300.530 through 300.536, Subsection I of 6.31.2.13 NMAC, and 6.11.2.11 NMAC regarding disciplinary changes of placement for children with disabilities; and~~

~~_____ (d) _____ the requirements of 34 CFR Secs. 300.43 and 300.320(b) and Paragraph (2) of Subsection G of 6.31.2.11 NMAC regarding transition planning. Students identified as gifted shall meet the requirements at Subsection B of 22-13-1.1 NMSA 1978, which is~~

the next step plan for students without disabilities:

~~(2) Assuming appropriate evaluations, a child may properly be determined to be both gifted and a child with a disability and be entitled to a free appropriate public education for both reasons. The rules in this section, 6.31.2.12 NMAC, apply only to gifted children.~~

~~(3) Nothing in these rules shall preclude a school district or a charter school within a school district from offering additional gifted programs for children who fail to meet the eligibility criteria. However, the state shall only provide funds under Section 22-8-21 NMSA 1978 for department-approved gifted programs for those students who meet the established criteria.~~

~~E. Advisory committees:~~

~~(1) Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students, and school staff members. The school district may create as many advisory committees as there are high schools in the school district or may create a district-wide advisory committee.~~

~~(2) The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the advisory committee advises. Representation from all schools the committee is advising is required.~~

~~(3) Purposes. The advisory committee shall:~~

~~(a) regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement, and service delivery;~~

~~(b) demonstrate support for the gifted program;~~

~~(c) provide information regarding the impact that cultural background, linguistic background, socioeconomic status, and disability conditions within~~

~~the community may have on the child referral, identification, evaluation, and service delivery processes;~~

~~(d) advocate for children who have been underrepresented in gifted services due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these children have equal opportunities to benefit from services for gifted students; and~~

~~(e) meet three or more times per year at regular intervals.~~

~~(4) Formal documentation of committee membership, activities, and recommendations shall be maintained. If proposals are made by the committee to address any of the purposes as listed in Paragraph (3) of Subsection G of 6.31.2.12 NMAC, they shall be submitted in writing to the school district administration. The school district administration shall respond in writing to any proposed actions before the next scheduled meeting of the advisory committee.]~~

[RESERVED]

[6.31.2.12 NMAC - Rp, 6.31.2.12 NMAC, 7/14/2020; Repealed, 7/31/2023]

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

<p>before filing a state-level complaint or a request for a due process hearing. The SED will honor a request for mediation that:</p>	<p>H. State complaint procedures.</p> <p>(1) Scope and dissemination.</p>	<p>procedure as defined in the preceding Paragraph (1) of Subsection H of 6.31.2.13 NMAC. The complaint shall: (i) be in writing; (ii) be submitted to the SED (or to the secretary of education, in the case of a complaint against the department); (iii) be signed by the complainant or a designated representative and have the complainant’s contact information; (iv) if alleging violations with respect to a specific child, include the name and address of the child and the school the child is attending; (v) include a statement that the department or a public agency has violated a requirement of an applicable state or federal law or rules; (vi) contain a statement of the facts on which the allegation of violation is based; and (vii) include a description of a proposed resolution of the problem to the extent known. Any complaint that does not contain each of these elements will be declined, with an explanation for the SED’s decision and further guidance, as appropriate.</p>
<p>is in writing;</p>	<p>(i)</p>	<p>(a)</p>
<p>is submitted to the SED;</p>	<p>(ii)</p>	<p>(b)</p>
<p>is a mutual request signed by both parties or their designated representatives;</p>	<p>(iii)</p>	<p>(c)</p>
<p>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>(iv)</p>	<p>(d)</p>
<p>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>(v)</p>	<p>(e)</p>
<p>Formal dispute resolution.</p>	<p>(c)</p>	<p>(f)</p>
<p>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>(i)</p> <p>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>(i)</p> <p>The SED shall place documents regarding state complaint procedures in English and Spanish, including state complaint forms, in an easily accessible location on the SED website.</p> <p>(ii)</p> <p>The SED shall, on a yearly basis, send an email to the organizations and individuals identified in Subparagraph (b) of Paragraph (1) of Subsection H of 6.31.2.13 NMAC providing information regarding state complaint procedures and encouraging these organizations and individuals to post a link to the SED website on their website.</p> <p>(iii)</p> <p>Upon request by any individual or organization, the SED shall provide the information regarding state complaint procedures, as posted on the SED’s website, in print or electronic form.</p>	<p>(b)</p> <p>If the complaint alleges violations with respect to a specific child, the complaint shall include the information required by 34 CFR 300.153(b)(4).</p> <p>(c)</p> <p>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>(d)</p> <p>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>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>(ii)</p>	<p>(3)</p> <p>Preliminary meeting.</p>
<p>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>(d)</p> <p>Requirements for complaints.</p> <p>(a)</p> <p>The SED of the department shall accept and investigate complaints from organizations or individuals that raise issues within the scope of this</p>	<p>(a)</p> <p>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)</p>

notify the SED of the department in writing within one business day of reaching their decision to jointly request one of these ADR options. A FIEP meeting or mediation shall be completed not later than 14 days after the assignment of the IEP facilitator or mediator by the SED, unless a brief extension is granted by the SED based on exceptional circumstances. Each session in the FIEP or mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the complaint.

(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 (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. 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 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; A, 7/31/2023]

**REGULATION
AND LICENSING
DEPARTMENT
SIGNED LANGUAGE
INTERPRETING PRACTICES
BOARD**

This is an amendment to 16.28.2 NMAC, Section 9 effective 7/31/2023.

16.28.2.9 CONTINUING EDUCATION REQUIREMENTS:

A. [Community or educational signed language interpreters are required to

comply with the RID certification-maintenance program (CMP)-requirements, regardless of their certifying body.] RID certified interpreters shall submit [a copy of their current RID membership card or verification letter from the RID-member portal showing current-certified membership status] proof of current RID certified member status documenting compliance with the requirements of the CMP which requires eight RID-approved continuing education units (CEUs) 80 contact hours per four-year CMP cycle. Should RID change its number of CEUs required an interpreter must comply with the new requirement in order to maintain licensure in New Mexico. BEI certified interpreters [and educational] shall submit BEI transcripts showing four CEUs (40 hours) of continuing education at each biennial renewal. Educational signed language [interpreter] interpreters meeting the criteria in Subsection D of 16.28.3.11 NMAC but not holding the ED:K-12 credential must submit associate continuing education tracking (ACET) transcripts showing four [CEU's] CEUs (40 hours) of continuing education at each biennial renewal.

B. Provisional license: two CEUs (20 hours) of continuing education annually documented on the applicant's associate continuing education tracking (ACET) transcript from RID. Interpreting students should be aware that they need to become associate members of RID before the end of March in their year of graduation for CEU's earned prior to July 1st to be tracked on their ACET transcripts.

C. Provisional licensees who are within their first year may provide certificates of completion to the board office if the approved CEUs are not on ACET transcripts.

[16.28.2.9 NMAC - N, 07/21/2009; A, 08/18/2011; A, 01/15/2014; A, 12/16/2015; A, 6/18/2017; A, 3/27/2021; A, 02/26/2022, A, 7/31/2023]

**REGULATION
AND LICENSING
DEPARTMENT
SIGNED LANGUAGE
INTERPRETING PRACTICES
BOARD**

This is an amendment to 16.28.3 NMAC, Section 11 effective 7/31/2023.

16.28.3.11 APPLICATION FOR LICENSURE:

A. An application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.

B. All applications for licensure must include:

- (1) a completed and signed application;
- (2) applicant name;
- (3) proof of age indicating applicant is at least eighteen years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);
- (4) mailing address;
- (5) business address;
- (6) phone number;
- (7) non-refundable application fee as required by the board;

(8) photograph: applicants for original licensure shall attach a recent color photograph, front-view of face.

C. An application for a community signed language interpreter license must also include:

- (1) ~~a copy of the applicant's current RID-membership card or~~
- (2) ~~verification letter from the RID-member portal showing that the applicant holds one or more certifications recognized by RID at the time of application for licensure with the exception of educational certificate: K-12 (ED-K-12); or~~

_____ (3) _____ a copy of the applicant's current BEI card showing one of the following certifications:

- _____ (a) _____
BEI Advanced;
- _____ (b) _____
BEI Master;
- _____ (c) _____
BEI IV;
- _____ (d) _____
BEI V;
- _____ (e) _____
BEI Level IV Intermediary;
- _____ (f) _____
BEI Level V Intermediary and.

_____ (4) _____ a copy of the applicant's current RID membership card or verification letter from the RID member portal showing that the applicant is an associate member for purposes of tracking continuing education units (CEU) requirements through the associate continuing education tracking (ACET) program as outlined in Subsection A of 16.28.2.9 NMAC.

_____ **D.** _____ An application for an educational signed language interpreter license must also include: proof of educational interpreter performance assessment (EIPA) rating of 4.0 - 5.0 and a copy of the applicant's current RID membership card or verification letter from the RID member portal showing that the applicant holds the ED: K-12 certified member status by virtue of EIPA rating; or a copy of the applicant's current RID membership card or verification letter from the RID member portal showing that the applicant holds one or more certifications currently recognized by RID, or proof of an educational interpreter performance assessment (EIPA) rating of 4.0 - 5.0, proof of passing the EIPA Written test, proof of satisfying the RID educational requirements, and a copy of the applicant's current RID membership card or verification letter from the RID member portal showing associate membership status.

_____ **E.** _____ An application for a provisional signed language interpreter license must also include: proof of completion of an interpreter

education program or interpreter preparation program at an accredited institution; or proof of employment as a community signed language interpreter or an educational signed language interpreter at the time the act became effective (June 15, 2007) and after the applicant reached the age of (18); and a copy of the applicant's current RID membership card or verification letter from the RID member portal showing that the applicant is an associate member for purposes of tracking continuing education units (CEU) requirements through the associate continuing education tracking (ACET) program as outlined in Subsection B of 16.28.2.9 NMAC. In lieu of proof of completion of an interpreter training program, deaf applicants may submit proof of satisfying the training requirement established by RID to take the certified deaf interpreter (CDI) written exam. If the applicant provides proof of completion of an interpreter education program or interpreter preparation program more than one year prior to their application for a provisional license, they must also submit a résumé and one professional letter of reference from an employer, internship supervisor, mentorship director, graduate school, or other applicable source documenting continued involvement in interpreting or the deaf community since the time of completion of the program.

_____ **F.** _____ If an applicant submits an incomplete license application they will be requested to submit any missing documentation; failure to do so within six months of receipt of the original application will result in the application file being closed. After the file has been closed, the applicant will be required to submit a new application and application fee to apply again.

_____ **G.** _____ **"Electronic Applications"** In accordance with Section 14-16-1 thru 14-16-21 NMSA 1978 of the Uniform Electronic Transactions Act, the board or its designee will accept electronic applications:

- _____ (1) _____ Any

person seeking a New Mexico signed language interpreting license may do so by submitting an electronic application. Applicants are required to also submit all required information as stated in 16.28.3.11 NMAC.

_____ (2) _____ Any licensee may renew their license electronically through a designated website provided by the board. All license holders renewing their signed language interpreting license are also required to submit all documentation as stated in 16.28.3.17 NMAC.

_____ (3) _____ Any person whose license has been expired may apply electronically to the board for renewal of the license at any time within 60 days of the expiration. Any persons seeking renewal are also required to submit all supporting documents as stated in 16.28.3.17 NMAC.

_____ (4) _____ Any person whose license has been lapsed may apply electronically to the board for reinstatement of the license at any time. Any persons seeking reinstatement are also required to submit all supporting documents as stated in 16.28.3.17 NMAC.

_____ **H.** _____ **"Electronic Signatures"** Electronic signatures will be acceptable for applications submitted pursuant to Sections 14-16-1 through 14-16-19 NMSA 1978.

_____ **I.** _____ **"Administrative Errors"** In the event that a community or educational license is issued due to an administrative error, and if the Interpreter is qualified for a provisional license, the permitted five years for the provisional license shall began at the time of the issuance of the erroneously issued license.]

_____ (1) _____ proof of current RID certified status showing that the applicant holds one or more certifications recognized by RID at the time of application for licensure with the exception of education certificates: K-12 (ED K-12); or

_____ (2) _____ a copy of the applicant's current BEI card showing one of the following certifications:

- _____ (a) _____
BEI Advanced;

(b)
BEI Master;

(c)
BEI IV;

(d)
BEI V;

(e)
BEI Level IV Intermediary;

(f)
BEI Level V Intermediary and.

D. An applicant for educational signed language interpreter license must include:

(1) proof of educational interpreter performance assessment (EIPA) rating 4.0 - 5.0; and

(2) proof of current RID certified member status showing that applicant holds the ED: K-12 certified member status by virtue of EIPA rating; or

(3) proof of current RID certified member status showing that applicant holds one or more certifications currently recognized by RID; or

(4) proof of an educational interpreter performance assessment (EIPA) rating 4.0 – 5.0, proof of passing the EIPA written test, proof of satisfying the RID educational requirements, and proof of current RID associate member status.

E. An application for a provisional signed language interpreters license must include:

(1) proof of completion of an interpreter education program or interpreter preparation program at an accredited institution; or

(2) proof of employment as a community signed language interpreter or an educational signed language interpreter at the time the act became effective (June 15, 2007) and after the applicant reached the age of 18; and

(3) proof of current RID associate member status for the purpose of tracking continuing education units (CEU) requirements through the associate continuing education tracking (ACET) program as outlined in Subsection B of 16.28.2.9 NMAC.

(4) in lieu of proof of completion of an interpreter training program, deaf applicants may submit proof of having completed at least 40 hours of training in topics such as fundamentals of interpreting, ethics and cultural responsiveness, and the NAD-RID Code of Professional Conduct.

(5) if the applicant provides proof of completion of an interpreter education program or interpreter preparation program more than three years prior to their application for a provisional license, they must also submit a resume and one professional letter of reference from an employer, internship supervisor, mentorship director, graduate school, or other applicable source documenting continued involvement in interpreting or the deaf community since the time of completion of the program.

F. If an applicant submits an incomplete license application they will be requested to submit any missing documentation; failure to do so within six months of receipt of the original application will result in the application file being closed. After the file has been closed, the applicant will be required to submit a new application and application fee to apply again.

G. “Electronic Applications” In accordance with Section 14-16-1 thru 14-16-21 NMSA 1978 of the Uniform Electronic Transactions Act, the board or its designee will accept electronic applications.

(1) Any person seeking a New Mexico signed language interpreting license may do so by submitting an electronic application. Applicants are required to also submit all required information as stated in 16.28.3.11 NMAC.

(2) Any licensee may renew their license electronically through a designated website provided by the board. All license holders renewing their signed language interpreting license are also required to submit all documentation as stated in 16.28.3.17 NMAC.

(3) Any person

whose license has been expired may apply electronically to the board for renewal of the license at any time within 60 days of the expiration. Any persons seeking renewal are also required to submit all supporting documents as stated in 16.28.3.17 NMAC.

(4) Any person whose license has been lapsed may apply electronically to the board for reinstatement of the license at any time. Any persons seeking reinstatement are also required to submit all supporting documents as stated in 16.28.3.17 NMAC.

H. “Electronic Signatures” Electronic signatures will be acceptable for applications submitted pursuant to Sections 14-16-1 through 14-16-19 NMSA 1978.

I. “Administrative Errors” In the event that a community or educational license is issued due to an administrative error, and if the Interpreter is qualified for a provisional license, the permitted five years for the provisional license shall began at the time of the issuance of the erroneously issued license. [16.28.3.11 NMAC - N, 07/21/2009; A, 08/18/2011; A, 01/15/2014; A, 12/16/2015; A, 6/18/2017; A, 3/27/2021, A, 7/31/2023]

REGULATION AND LICENSING DEPARTMENT SIGNED LANGUAGE INTERPRETING PRACTICES BOARD

This is an amendment to 16.28.7 NMAC, Section 7, 8, 9 and 10 effective 7/31/2023.

16.28.7.7 DEFINITIONS:

A. “License” means a license, registration, certificate of registration, certificate, permit or certification.

B. “Licensing fee” means a fee charged at the time an application for a professional or occupational license is submitted to the state agency, board or commission and any fee for the processing of

an application for such license; “licensing fee” does not include a fee for an annual inspection or examination of a licensee or a fee charged for copies of documents, replacement license or other expenses related to a professional or occupational license.

C. “Military service member”: means a person who is:

- (1) serving in the armed forces of the United States as an active duty member or in an active reserve component of the armed forces of the United States including the national guard, or surviving spouse of a member who at the time of the member’s death was serving on active duty; or
- (2) the spouse of a person who is serving in the armed forces of the United State or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at the time of the member’s death was serving on active duty; or
- (3) the child of a person who is serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard; provided that the child is also a dependent of that person for federal income tax purposes; and

D. [4] “Veteran” means a person who has received an honorable discharge or separation from military service.

~~**D. “Substantially equivalent”** means the determination by the board that the education, examination, and experience requirements contained in the statutes and rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements of the Signed Language Interpreting Practices Act Sections 61-34-1 through -17 NMSA-1978.;~~

[16.28.7.7 NMAC - N, 1/15/2014; A, 3/2/2022, A, 7/31//2023]

16.28.7.8 APPLICATION REQUIREMENTS:

A. Applications for registration shall be completed on a form provided by the board.

B. The completed application shall include the following information:

- (1) applicant’s full name;
- (2) current mailing address;
- (3) current electronic mail address, if any;
- (4) date of birth;
- (5) background check if required; and
- (6) proof as described in subsection C below.

C. The applicant shall provide the following satisfactory evidence:

- (1) applicant is currently licensed and in good standing in another jurisdiction, including a branch of the United States armed forces;
- (2) ~~[applicant has met the minimal licensing requirements in that jurisdiction and the minimal licensing requirements in that jurisdiction are substantially equivalent to the licensing requirements for New Mexico;~~ (3) the following documentation:

(a) a copy of military orders for military service members;

(b) a copy of military service member’s military orders and a copy of marriage license for spouses of military service members;

(c) for spouses of deceased military members: a copy of the decedent’s DD 214 and a copy of marriage license;

(d) for dependent children of military service members: a copy of military service member’s orders listing the dependent child, or a copy of military orders and one of the following: a copy of a birth certificate, military service member’s federal income

tax return or other governmental or judicial documentation establishing dependency;

(e) for veterans (retired or separated): a copy of DD 214 showing proof of honorable discharge.

D. The license shall be issued by the board as soon as is practicable but no later than 30 days after a qualified military service member, spouse, dependent child, or veteran files a complete application and pays any required fees.

E. Military service members and veterans shall not pay, and the board shall not charge a licensing fee for the first three years for a license issued pursuant to this rule.

F. A license issued pursuant to this rule shall be valid for the time period that is specified in the Signed Language Interpreting Practices Act, Sections 61-34-1 to -17 NMSA 1978.

G. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for renewal set forth in 16.28.7.11 NMAC , Section 61-34-10 NMSA 1978. As a courtesy, the board will send, via electronic mail, license renewal notifications to licensees or registrants before the license expiration date to the last known electronic mail address on file with the board. Failure to receive the renewal notification shall not relieve the licensee or registrant of the responsibility of timely renewal on or before the expiration date.

H. Electronic signatures will be acceptable for applications submitted pursuant to Sections 14-16-1 through -19 NMSA 1978.

[16.28.7.8 NMAC - N, 1/15/2014; A, 3/2/2022, A, 7/31//2023]

16.28.7.9 FEES:

~~**A.** The fee for application for community and educational license is \$65.00.~~

~~**B.** The fee for application for provisional license is \$40.00.~~

~~**C.** The fee for renewal~~

of community and educational license is \$50.00.

~~_____ D. _____~~ The fee for compliance review of provisional license is \$25.00.]

~~_____ A. _____~~ The fee for renewal of community and educational license is \$50.00.

~~_____ B. _____~~ The fee for compliance review of provisional license is \$25.00.

[16.28.7.9 NMAC - N, 1/15/2014, A, 7/31//2023]

16.28.7.10 RENEWAL REQUIREMENTS:

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance and for the renewal of a license pursuant to Chapter 61, Articles 2 through 34 NMSA 1978.

~~_____ (1) _____~~ an application for a community signed language interpreter license must also include: a copy of the applicant's current registry of interpreters for the deaf (RID) membership card or verification letter from the registry of interpreters for the deaf RID member portal showing that the applicant holds one or more certifications recognized by the RID at the time of application for licensure with the exception of educational certificate: K-12 (ED: K-12); or

~~_____ (2) _____~~ a copy of the applicant's current BEI card showing one of the following certifications:

~~_____ (a) _____~~ BEI Advanced;

~~_____ (b) _____~~ BEI Master;

~~_____ (c) _____~~ BEI IV;

~~_____ (d) _____~~ BEI V;

~~_____ (e) _____~~ BEI Level IV Intermediary;

~~_____ (f) _____~~ BEI Level V Intermediary;

~~_____ (3) _____~~ and a copy of the applicant's current RID membership card or verification letter from the RID member portal showing that the applicant is an

associate member for purposes of tracking continuing education units (CEU) requirements through the associate continuing education tracking (ACET) program as outlined in Subsection A of 16.28.2.9 NMAC;

~~_____ (4) _____~~ an application for an educational signed language interpreter license must also include: proof of educational interpreters performance assessment (EIPA) rating of 4.0 - 5.0 and a copy of the applicant's current registry of interpreters for the deaf RID membership card or verification letter from the RID member portal showing that the applicant holds the ED: K-12 certified member status by virtue of EIPA rating; or a copy of the applicant's current RID membership card or verification letter from the registry of interpreters for the deaf RID member portal showing that the applicant holds one or more certifications currently recognized by the registry of interpreters for the deaf RID, or has passed the educational interpreter performance assessment (EIPA) with a score of 4.0 - 5.0, has passed the EIPA written test, and is an associate member of RID;

~~_____ (5) _____~~ an application for a provisional signed language interpreter license must also include: proof of completion of an interpreter education program or interpreter preparation program at an accredited institution; or proof of employment as a community signed language interpreter or an educational signed language interpreter at the time the act became effective (June 15, 2007) and after the applicant reached the age of 18; and a copy of the applicant's current registry of interpreters for the deaf RID membership card or verification letter from the registry of interpreters for the deaf RID member portal showing that the applicant is an associate member (for purposes of tracking continuing education units CEU requirements through the associate continuing education tracking (ACET) program as outlined in Subsection B of 16.28.2.9 NMAC. If the applicant provides proof of completion of an interpreter education

program or interpreter preparation program more than one year prior to their application for a provisional license, they must also submit a résumé and one professional letter of reference from an employer, internship supervisor, mentorship director, graduate school, or other applicable source documenting continued involvement in interpreting or the deaf community since the time of completion of the program.

~~_____ B. _____~~ Original and renewed community and educational license shall be valid for a period of two years.

~~_____ C. _____~~ Original and completed compliance reviewed provisional license shall be valid for a period of one year, not to exceed four consecutive annual compliance review cycles.

~~_____ D. _____~~ Prior to the expiration of the license, all licensed interpreters shall apply for license renewal and shall pay the renewal fee as set forth in 16.28.6.9 NMAC.].

~~_____ B. _____~~ A renewal application for a community signed language interpreter license must include:

~~_____ (1) _____~~ proof of current registry of interpreters for the deaf (RID) certified member status showing that the licensee holds one or more certifications recognized by the RID at the time of renewal with the exception of educational certification K-12 (ED: K-12); or

~~_____ (2) _____~~ a copy of the applicant's current BEI card showing one of the following certifications:

~~_____ (a) _____~~ BEI Advanced;

~~_____ (b) _____~~ BEI Master;

~~_____ (c) _____~~ BEI IV;

~~_____ (d) _____~~ BEI V;

~~_____ (e) _____~~ BEI Level IV Intermediary; or

~~_____ (f) _____~~ BEI Level V Intermediary.

~~_____ C. _____~~ A renewal application for an educational signed

language interpreter license must include:

(1) proof of educational interpreters performance assessment (EIPA) rating 4.0-5.0; and

(2) Proof of current RID certified member status showing that the licensee holds the ED: K-12 certified member status by virtue of EIPA rating; or

(3) proof of current RID certified member status showing that the applicant hold one or more certifications currently recognized by the registry of interpreters for the deaf (RID); or

(4) proof of an educational interpreter performance assessment (EIPA) rating of 4.0 - 5.0, proof of passing the EIPA written test, proof of satisfying the RID educational requirements, and proof of current RID associate member status.

D. A renewal application for a provisional signed language interpreters include:

(1) proof of completion of an interpreter education program or interpreter preparation program in an accredited institution: or

(2) proof of employment as a community signed language interpreter or an educational signed language interpreter at the time of the act became effective (June 15, 2007) and after the applicant reached the age of 18; and

(3) proof of current registry of interpreters for the deaf (RID) associate member status for the purpose of tracking continuing education units (CEU) requirements through the associate continuing education tracking (ACET) program as outlined in Subsection B of 16.28.2.9 NMAC;

(4) in lieu of completion of an interpreter training program deaf applicant may complete proof of having completed at least 40 hours of training in topics such as the fundamentals of interpreting, ethics and cultural responsiveness, and the NAD-RID Code of Professional Conduct;

(5) if

the applicant provides proof of completion of an interpreter education program or an interpreters preparation program more than three years prior to their application for provisional license, they must also submit a resume and one professional letter of reference from an employer, internship supervisor, mentorship director, graduate school, or other applicable source documenting continued involvement in interpreting or the deaf community since the time of completion of the program.

E. Original and renewed community and educational license shall be valid for a period of two years.

F. Original and completed compliance reviewed provisional license shall be valid for a period of one year, not to exceed four consecutive annual compliance review cycles.

G. Prior to the expiration of the license, all licensed interpreters shall apply for license renewal and shall pay the renewal fee as set forth in 16.28.6.9 NMAC. [16.28.7.10 NMAC - N, 01/15/2014; A, 12/16/15; A, 6/18/2017; A, 3/27/2021, A, 7/31//2023]

SPACEPORT AUTHORITY

TITLE 18 TRANSPORTATION AND HIGHWAYS

CHAPTER 61 SPACEPORTS PART 3 SPACEPORT AUTHORITY BOARD OF DIRECTORS BYLAWS

18.61.3.1 ISSUING AGENCY: New Mexico Spaceport Authority. [18.61.3.1 NMAC - N, 7/31/2023]

18.61.3.2 SCOPE: This rule applies to the New Mexico spaceport authority and members of the board of directors of the New Mexico spaceport authority. [18.61.3.2 NMAC - N, 7/31/2023]

18.61.3.3 STATUTORY AUTHORITY: Section 58-31-5, NMSA 1978. [18.61.3.3 NMAC - N, 7/31/2023]

18.61.3.4 DURATION: Permanent. [18.61.3.4 NMAC - N, 7/31/2023]

18.61.3.5 EFFECTIVE DATE: July 31, 2023. [18.61.3.5 NMAC - N, 7/31/2023]

18.61.3.6 OBJECTIVE: The objective of this rule is to codify the bylaws that govern the conduct of the board of directors of the New Mexico spaceport authority. [18.61.3.6 NMAC - N, 7/31/2023]

18.61.3.7 DEFINITIONS:

A. "The authority", or New Mexico spaceport authority, means a state agency created by the Spaceport Development Act and administratively attached to the economic development department in accordance with Section 9-1-7 NMSA 1978 and charged with the responsibility of carrying out the day-to-day business of the agency. The authority is also known as "the agency" in business relations with its partners, customers and other governmental entities as an executive agency of the state of New Mexico.

B. "The board" means the board of directors, the entity created by Section 58-31-4, NMSA 1978 comprised of nine members, among whom is the executive director who runs the agency. The board is responsible for making and implementing all rules and regulations necessary for the efficient administration of Spaceport America.

C. "Spaceport America" is the trademarked identity of a commercial spaceport business operated, managed and maintained by the authority in Sierra county, New Mexico, located on state trust land pursuant to Business Lease No. BL-1729, effective January 1, 2007.

D. "Spaceport" means the physical property in Sierra county New Mexico, comprising 18,461.45

acres and the facilities, infrastructure, access roads and other improvements located thereon.

[18.61.3.7 NMAC - N, 7/31/2023]

18.61.3.8 TITLE: These rules shall be known as the “Bylaws of the Board of Directors of the New Mexico Spaceport Authority,” hereinafter referred to as the “bylaws.”

[18.61.3.8 NMAC - N, 7/31/2023]

18.61.3.9 THE AUTHORITY:

A. Spaceport Development Act. The New Mexico spaceport authority (the authority) is a New Mexico state agency organized under the provisions of the Spaceport Development Act, Sections 58-31-1, et seq. NMSA 1978.

B. Governance. The authority is governed by seven voting and two nonvoting members of the board of directors (the “board”). The board shall make all rules and regulations necessary for the administration of Spaceport America.

C. Purpose. The authority shall implement the purposes of the Spaceport Development Act:

- (1) encourage and foster development of the state and its cities and counties by developing spaceport facilities in New Mexico;
 - (2) actively promote and assist public and private sector infrastructure development to attract new industries and businesses, thereby creating new job opportunities in the state;
 - (3) create the statutory framework that will enable the state to design, finance, construct, equip and operate spaceport facilities necessary to ensure the timely, planned and efficient development of a southwest regional spaceport; and
 - (4) promote educational involvement in spaceport activities and education and training of the workforce to develop the skills needed for spaceport operations.
- [18.61.3.9 NMAC - N, 7/31/2023]

18.61.3.10 BYLAWS AND

POLICIES: These bylaws govern the conduct of the board and its implementation and compliance with the Spaceport Development Act. In addition to the bylaws, the board shall, from time to time, adopt policies and other resolutions governing specific matters to confirm and augment the bylaws, as well as govern use and operations at Spaceport America.

[18.61.3.10 NMAC - N, 7/31/2023]

18.61.3.11 EFFECT OF BYLAWS ON PAST ACTIONS AND OBLIGATIONS: The adoption of these bylaws or the repeal of a resolution by the bylaws shall not affect:

- A.** Vested rights and obligations pertaining to any prior resolution; or
- B.** Other matters of record referring to resolutions and not included within the bylaws.

[18.61.3.11 NMAC - N, 7/31/2023]

18.61.3.12 MAINTENANCE OF BYLAWS AND OTHER BOARD MATERIALS:

- A.** Certified copies of the bylaws and all resolutions approved by the board, including those that adopt policies governing the Spaceport, shall be maintained on file in the Spaceport America offices and on the Spaceport America website.
- B.** Other materials used by the board shall also be maintained on file at the Spaceport America offices, including agendas, minutes, final reports, presentations and other materials used by the board to carry out official business.

[18.61.3.12 NMAC - N, 7/31/2023]

18.61.3.13 MISSION OF BOARD OF DIRECTORS:

The mission of the authority board of directors (the board) is to ensure operation of Spaceport America, as described in the Spaceport Development Act and in the best interests of the citizens of New Mexico; establish rules, regulations, and policies for the administration,

governance, protection and maintenance of Spaceport America’s facilities; establish standards of operation; and operate the authority as an economic development engine for the state of New Mexico.

[18.61.3.13 NMAC - N, 7/31/2023]

18.61.3.14 MEMBERSHIP:

A. Assuming office.

A person may become a member of the board only by appointment or on an ex-officio basis. The board shall consist of seven voting and two nonvoting members, six of whom shall be appointed by the governor with the consent of the senate, provided that one of the appointed members shall be a resident of Sierra county. No more than three appointed members shall belong to the same political party. The seventh member shall be the secretary of economic development or the secretary’s designee. The lieutenant governor shall serve as a nonvoting ex-officio member. The executive director of the authority shall serve as a nonvoting member.

B. Vacancies. If a vacancy occurs among the appointed voting members of the board, the governor shall appoint a replacement to serve out the term of the former member. If an appointed member’s term expires, the member shall continue to serve until the member is reappointed or another person is appointed and confirmed by the senate to replace the member.

C. Qualification and term. The members appointed by the governor shall be residents of the state and shall serve for terms of four years, except for the initial appointees who shall be appointed so that the terms are staggered after initial appointment. Initial appointees shall serve terms as follows: two members for two years, two members for three years and two members for four years.

D. The secretary of economic development or the secretary’s designee shall serve as the chairperson of the board (the chair).

E. The members of the board shall not be compensated for their services but may be reimbursed by the agency for reasonable and

necessary expenses actually incurred for the benefit of the agency, upon presentation of proper documentation. [18.61.3.14 NMAC - N, 7/31/2023]

18.61.3.15 ETHICS AND CONFLICT OF INTEREST

CODE: It is the intent of the board to act in the highest ethical standard in carrying out its duties to the public and in the operation of its facilities. It is also the intent of the board to protect the authority's interests when entering into a transaction or agreement, and not the private interests of any director, officer, or employee. Accordingly, all board members shall adhere to the requirements of the Governmental Conduct Act (Chapter 10, Article 16, NMSA 1978) and the Governor's Code of Conduct adopted thereunder, as well as any other applicable rules or laws governing their conduct as executive agency appointees, including but not limited to the Financial Disclosure Act (Chapter 10, Article 16A NMSA 1978), the Gift Act (Chapter 10, Article 16B NMSA 1978), the Lobbyist Regulation Act (Chapter 2, Article 11 NMSA 1978), the Personnel Act (Chapter 10, Article 9, NMSA 1978) and the Procurement Code (Chapter 13, Article 1 NMSA 1978).

[18.61.3.15 NMAC - N, 7/31/2023]

18.61.3.16 MEETINGS:

A. Open meetings. Meetings of the board shall be open and public, except as allowed by law, and unless otherwise provided, shall be conducted in accordance with Robert's Rules of Order. All meetings of the board and its committees shall be conducted in accordance with the "Open Meetings Act," Sections 10-15-1, et seq. NMSA 1978. Members of the public shall be permitted to attend any portion of a meeting, except a closed session. A quorum is established when a simple majority of the membership is in attendance, physically, telephonically or by videoconference, as permitted by law. Board actions shall be approved on a majority vote of the quorum present at the meeting.

B. The board shall maintain written minutes of all meetings of the authority and maintain other appropriate records, including financial transaction records in compliance with law and adequate to provide an accurate record for audit purposes pursuant to the Audit Act.

C. Regular meetings. The board shall meet at the call of the chairperson in regular session at least once every three months. Such regular meetings shall comply with the procedural requirements of the Open Meetings Act, Subsections D and F of Sections 10-15-1 NMSA 1978, including reasonable advance notice of not less than 10 days that informs the public of the meeting time, place and date, published or posted in a place and manner accessible to the public (main office or on website) and a final agenda shall be posted 72 hours prior to the meeting (inclusive of any weekend or holidays) on the Governance page of Spaceport America's website at <https://www.spaceportamerica.com/governance/>. Notice requirements are met if notice of the date, time, place and agenda is provided by telephone to newspapers of general circulation in the state and posted in the offices of Spaceport America. Telephone notice also shall be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.

D. Special meetings. Special meetings may be called to discuss important topics that should not wait until a regular meeting, or for topics that, for good reason, could occupy an entire meeting. If the need for such a meeting arises outside a regularly scheduled meeting, the board chair may schedule a meeting on reasonable advance notice of not less than three days which shall include an agenda for the meeting, or information on how the public may obtain a copy of the agenda. Aside from the timeframe, the same notice procedures for regular meetings apply to special meetings.

E. Emergency meetings. Emergency meetings will be called only under unforeseen circumstances that demand immediate action to protect the health, safety and property of citizens or to protect the authority from substantial financial loss. The board will avoid emergency meetings whenever possible. Emergency meetings may be called by the chairperson or a majority of the board members with 24 hours prior notice, unless threat of personal injury or property damage requires less notice. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda. Within 10 days after taking action on an emergency matter, the board chairperson will notify the attorney general's office. For the purposes of emergency meetings, notice requirements are met if notice of the date, time, place and agenda is provided by telephone to newspapers of general circulation in the state and posted in the offices of Spaceport America. Telephone notice also shall be given to those broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have made a written request for notice of public meetings.

F. Prohibited meetings. A quorum of the board shall not discuss the business of the authority directly, serially, or through an intermediary, except at a properly noticed public meeting in compliance with the Open Meetings Act. Less than a quorum of the board (but not a standing committee) may discuss authority business, including the time, place, and agenda for a meeting, at any time.

G. Closed meetings. The board may close a meeting to the public only if the subject matter of such discussion or action is excepted from the open meeting requirement under Subsection H of Sections 10-15-1 NMSA 1978 of the Open Meetings Act.

(1) If any meeting is closed during an open meeting, such closure shall be

approved by a majority vote of a quorum of the board taken during the open meeting. The authority for the closed meeting and the subjects to be discussed shall be stated with reasonable specificity in the motion to close and the vote of each individual member on the motion to close shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in the closed meeting.

(2) If a closed meeting is conducted when the board is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting and the subjects to be discussed with reasonable specificity, is given to the members and to the general public.

(3) Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.

(4) Except as provided in Subsection H of Sections 10-15-1 NMSA 1978 of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote of the board in an open public meeting. [18.61.3.16 NMAC - N, 7/31/2023]

18.61.3.17 POWERS

COMPULSIVE: The authority shall:

A. hire, and be authorized to fire, an executive director, who shall employ the necessary professional, technical and clerical staff to enable the authority to function efficiently and shall direct the affairs and business of the authority, subject to the direction of the board;

B. advise the governor, the governor's staff and the New Mexico finance authority oversight committee on methods, proposals, programs and initiatives involving the Spaceport that may further

stimulate space-related business and employment opportunities in New Mexico;

C. initiate, develop, acquire, own, construct, maintain and lease space-related projects;

D. make and execute all contracts and other instruments necessary or convenient to the exercise of its powers and duties;

E. create programs to expand high-technology economic opportunities within New Mexico;

F. create avenues of communication among federal government agencies, the space industry, users of space launch services and academia concerning space business;

G. promote legislation that will further the goals of the authority and development of space business;

H. oversee and fund production of promotional literature related to the authority's goals;

I. identify science and technology trends that are significant to space enterprise and the state and act as a clearinghouse for space enterprise issues and information;

J. coordinate and expedite the involvement of the state executive branch's space-related development efforts;

K. perform environmental, transportation, communication, land use and other technical studies necessary or advisable for projects and programs or to secure licensing by appropriate United States agencies; and

L. review summary scopes of work and approve of all purchases above \$60,000, pursuant to procurement guidelines issued under Procurement Code Section 13-1-125 NMSA 1978, developed by the general services department and the department of finance, provided to the authority and retained by the authority's chief procurement officer for inspection by any board member at any time.

[18.61.3.17 NMAC - N, 7/31/2023]

18.61.3.18 POWERS

PERMISSIVE: The authority may:

A. advise and cooperate with municipalities, counties, state agencies and organizations, appropriate federal agencies and organizations and other interested persons and groups;

B. solicit and accept federal, state, local and private grants of funds or property and financial or other aid for the purpose of carrying out the provisions of the Spaceport Development Act;

C. adopt rules governing the manner in which its business is transacted and the manner in which the powers of the authority are exercised and its duties performed;

D. operate spaceport facilities, including acquisition of real property necessary for spaceport facilities and the filing of necessary documents with appropriate agencies;

E. construct, purchase, accept donations of or lease projects located within the state;

F. sell, lease or otherwise dispose of a project upon terms and conditions acceptable to the authority and in the best interests of the state;

G. issue revenue bonds pursuant to the requirements of Sections 58-31-6 thru 58-31-10 NMSA 1978 and borrow money for the purpose of defraying the cost of acquiring a project by purchase or construction and of securing the payment of the bonds or repayment of a loan;

H. enter into contracts with regional spaceport districts and issue bonds on behalf of regional spaceport districts for the purpose of financing the purchase, construction, renovation, equipping or furnishing of a regional spaceport or a spaceport-related project;

I. refinance a project;

J. contract with any competent private or public organization or individual to assist in the fulfillment of its duties;

K. fix, alter, charge and collect tolls, fees or rentals and impose any other charges for the use of or for services rendered by any authority facility, program or service; and

L. contract with regional spaceport districts to receive municipal spaceport gross receipts tax and county regional spaceport gross receipts tax revenues.
[18.61.3.18 NMAC - N, 7/31/2023]

18.61.3.19 POWERS

PROSCRIPTIVE: The authority shall not:

A. incur debt as a general obligation of the state or pledge the full faith and credit of the state to repay debt; or

B. expend funds or incur debt for the improvement, maintenance, repair or addition to property unless it is owned by the authority, the state or a political subdivision of the state.
[18.61.3.19 NMAC - N, 7/31/2023]

18.61.3.20 STANDING

COMMITTEES: Committees of the board shall be standing or ad hoc. Upon the creation of a standing committee, the chair shall appoint, in consultation with the board, members of the committee, including two board members and, as appropriate, members of staff or the community appointed by the chair. One of the board members shall act as the committee chair. A majority of members of a committee shall count as a quorum for holding a meeting. All committees shall be advisory to the board, except as otherwise expressly specified by the board chair.
[18.61.3.20 NMAC - N, 7/31/2023]

18.61.3.21 AD HOC

COMMITTEES: Ad hoc committees may be established by the chair, subject to approval of the board, for defined tasks of a limited duration (for instance, not to exceed six months). An ad hoc committee shall only perform those duties assigned by the chair, and upon their completion be discharged. The chair, in consultation with the board, shall appoint the members of the committee and the chair of the committee.
[18.61.3.21 NMAC - N, 7/31/2023]

18.61.3.22 EXECUTIVE

COMMITTEE: The chair, four other

voting board members appointed by the chair and the executive director of the authority shall constitute the spaceport authority executive committee. The committee shall have powers and duties as delegated to it by the authority.
[18.61.3.22 NMAC - N, 7/31/2023]

18.61.3.23 EXECUTIVE DIRECTOR:

A. The executive director shall be appointed by and hold office at the pleasure of the board. The executive director shall receive such annual compensation as set by the board. In addition, the executive director shall be reimbursed for actual, reasonable, and necessary expenses incurred in the performance of official duties and in accordance with 2.42.2 NMAC. The performance of the executive director shall be reviewed annually by the board.

B. Executive director authority. The executive director shall be the administrative head of the authority under the direction of the board. The executive director shall be responsible for the efficient administration of affairs of the authority with the authority to:

(1) enforce rules and regulations and ensure that contracts, permits, leases and any other privileges are enforced;

(2) control, order, and give directions and guidance to subordinate employees;

(3) hire, remove, promote, demote and establish the proper classification of employees, subject to all applicable resolutions, rules, and regulations;

(4) direct, supervise and monitor daily business and aerospace operations;

(5) ensure the agency complies with all local, state and federal laws, ordinances and regulations required to maintain an active spaceport launch and/or reentry license, as applicable;

(6) lead, manage, operate and grow a sales, marketing, and business development team capable of attracting spaceport customers and projects, programs and

undertakings suitable for Spaceport America;

(7) work with customers and other federal and state agencies on aerospace operations with an understanding of scheduling issues, range instrumentation requirements (radar, weather, telemetry), and radiofrequency spectrum usage and deconfliction

(8) plan, develop, operate, maintain and manage spaceport infrastructure and utilities facilities in an efficient and effective manner;

(9) establish and manage operational and capital investment budgets;

(10) attend board meetings, unless excused by the chair, and recommend to the board measures and resolutions;

(11) keep the board fully advised as to the financial condition and needs of the authority;

(12) ensure all materials used by the board for the execution of official business, including agendas, minutes, resolutions, and other materials presented to the board are preserved, filed, organized and accessible as Spaceport America records and, where appropriate, published on the Spaceport America website.

(13) take any other action consistent with the Spaceport Development Act, Sections 58-31-1, et seq., NMSA 1978 the statutes governing the relationship between executive departments and administratively attached agencies, Sections 10-9-1, et seq. NMSA 1978, the State Personnel Act, Sections 10-9-1 to 10-9-25 NMSA 1978 and the rules and regulations contained in 1.7.1 NMAC.

C. The board and its members shall deal with the administrative services of the authority only through the executive director. Except for the purpose of inquiry, board members shall not give orders or instructions to any subordinate of the executive director. The executive director shall take orders and instructions from the board only when sitting in a duly

convened meeting of the board, and no individual board member shall give any orders or instructions to the executive director.

D. The board shall assist the executive director in administering the affairs of the authority efficiently and harmoniously.
[18.61.3.23 NMAC - N, 7/31/2023]

18.61.3.24 PERSONNEL SYSTEM: The executive director shall:

A. Prepare an organizational structure for board approval, make final determinations of the classified status of each employee and implement those decisions in accordance with the procedures of the state personnel office;

B. Provide for publication of employment openings in accordance with state personnel office procedures, conduct interviews of candidates and make determinations for hiring the selected candidate;

C. Annually evaluate the performance of each employee either directly or as delegated to a manager; and

D. Recommend promotions.
[18.61.3.24 NMAC - N, 7/31/2023]

18.61.3.25 AUDITOR: The authority shall annually hire an independent auditor to audit the books and records of the authority and to certify as to the accuracy of the same. The independent auditor shall not be a director, officer, or employee of the authority.

[18.61.3.25 NMAC - N, 7/31/2023]

18.61.3.26 DIRECT BOARD SUPERVISION: The executive director shall be appointed by the board, report to the board and serve at the pleasure of the board.

[18.61.3.26 NMAC - N, 7/31/2023]

18.61.3.27 REVIEW OF BYLAWS: At least once every five years the board shall review these bylaws to ensure they comply with

the Spaceport Development Act and all other applicable federal and state laws and regulations in keeping with the functions of the board.

[18.61.3.27 NMAC - N, 7/31/2023]

18.61.3.28 AMENDMENT OF BYLAWS: These bylaws may be altered, amended or repealed by two-thirds majority vote of the members of the board present at any meeting called specifically for the purpose, among other things, of amending these bylaws.

[18.61.3.28 NMAC - N, 7/31/2023]

History of 18.61.3 NMAC:
[RESERVED]

WORKFORCE SOLUTIONS, DEPARTMENT OF

This is an amendment to 11.2.3 NMAC Sections 10 and 29 to be effective 07/31/2023.

11.2.3.10 ORGANIZATION OF SAC: The SAC provides advice and guidance to the department on the operation of the state's apprenticeship system.

A. The SAC shall consist of three persons known to represent employers, three persons known to represent labor organizations, and three public representatives, appointed by the cabinet secretary of workforce solutions. Persons appointed to the council shall be familiar with apprenticeable occupations.

B. The secretary of workforce solutions and the secretary of public education, or their designees, shall be ex-officio, non-voting members of the SAC.

[B-] C. SAC members shall be appointed as provided for in Section 50-7-3 NMSA 1978. If a SAC member misses two consecutive meetings, unless for just cause beyond the member's control, the SAC shall recommend to the department that such member be replaced by a person who represents the same interest group.

[C-] D. Officers of the SAC shall consist of a chairman and a vice-chairman. These officers will be elected annually at the third quarter regular meeting and shall assume office immediately upon election. The chairman and vice-chairman shall not be selected from the same interest group and shall not be eligible to succeed themselves. A former chairman or vice-chairman may be elected to the same office after having been out of that office for one year.

[D-] E. The director shall serve as executive secretary and as an ex-officio, non-voting member of the SAC and as an ex-officio non-voting member of any committees created pursuant to Subsection E of 11.2.3.10 NMAC.

[E-] F. Committees may be appointed by the SAC chairman to study, research, and make recommendations to the SAC on such matters as may be deemed to be appropriate by the SAC. Membership of such committees may be composed of SAC members, other interested persons, or a combination of SAC members and non-members.

[11.2.3.10 NMAC – Rp, 11.2.3.10 NMAC, 1/30/2018; A, 7/31/2023]

11.2.3.29 ENERGY TRANSITION ACT COMPLIANCE

A. The construction of New Mexico facilities that generate electricity for New Mexico retail customers, and that are not located on the customer side of an electricity meter, shall be subject to the requirements of Subsection B of Section 62-13-16 NMSA 1978 if the facilities are built as a result of competitive solicitations issued after July 1, 2020.

B. Subject to availability of qualified applicants, the construction of facilities that generate electricity for New Mexico retail customers shall employ apprentices from an apprenticeship program registered with [NMDWS] the department, the United States department of labor, OA, or another SAA if reciprocity was previously granted. Apprenticeship programs

must be registered during the construction phase of a project at a minimum level as outlined in Subsection B of Section 62-13-16 NMSA 1978 for all persons employed for the project.

(1) A “project” for the purposes of this Section means any construction of a facility that generates electricity or transmits electricity for New Mexico retail customers.

(2) The number of apprentices required applies to each occupation or trade performing services during the project.

C. NMDWS shall be responsible for monitoring the project for the appropriate level of apprentices on the project and ensuring compliance.

(1) Upon receiving a funding award for construction of such a project, the general contractor shall submit a compliance plan including an outline for how the contractor will meet the required number of apprentices for the project and a list of subcontractors to NMDWS within 10 days of the award. The list of subcontractors shall be updated quarterly.

(2) Once a quarter, NMDWS shall initiate an investigation into the project to determine if the appropriate number of apprentices are being utilized for the project.

(3) During the investigation, NMDWS may request certified payroll records from the contractor or subcontractor which must be submitted to the Department within 10 days of the request.

(4) If during the investigation it is determined that a contractor or subcontractor is not compliant with these provisions, NMDWS shall issue a notice of non-compliance. The contractor or subcontractor shall have 10 days to become compliant.

(5) Failure to comply with the investigation or to adhere to the requirement for apprenticeship percentage will result in a referral to the Public Regulatory

Commission with a recommendation to withhold future contract awards.

D. NMDWS will continue to encourage diversity among apprenticeship program participants, participation by the underrepresented in the industry associated with that apprenticeship program and participation from disadvantaged communities.

[11.2.3.28 NMAC – N, 1/1/2020; A, 7/31/2023]

End of Adopted Rules

Other Material Related to Administrative Law

**HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION****HUMAN SERVICES REGISTER****I. DEPARTMENT**

Human Services Department

II. SUBJECT

Low Income Home Energy Assistance (LIHEAP) Program State Plan

III. PROGRAMS AFFECTED

Low Income Home Energy Assistance Program

IV. ACTION

Proposed State Plan

V. BACKGROUND

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

VI. PROPOSED REPORT

The Department proposes the New Mexico LIHEAP State Plan covering the period of October 1, 2023, to September 30, 2024. All comments received will be considered for the New Mexico LIHEAP State Plan.

The proposed State Plan is available on and can be printed from the Department's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>. A copy of the proposed LIHEAP State Plan is available in written format upon request. Please call the Income Support Division/LIHEAP unit at (505) 709-5391 to request a copy. You may also send a request to:

Human Services Department
Income Support Division
Attn: Work and Family Support Bureau/LIHEAP
PO Box 2348
Santa Fe, New Mexico 87504-2348

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, through the office of General Counsel at 505-827-7701 or through the New Mexico Relay system, at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

VII. EFFECTIVE DATE

Federal Fiscal Year 2024

VIII. PUBLIC HEARING

A public hearing to receive comments on this proposed plan will be held on September 1, 2023 from 9:00 a.m. to 10:00 a.m. The hearing will be held at 39-B Plaza La Prensa, Santa Fe, NM 87507.

IX. ADDRESS

Interested persons may address written or recorded comments to:

Human Services Department
Attn: CSBG Program Manager
P.O. Box 2348
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to: HSD-isdrules@hsd.nm.gov.

Comments will be posted on the HSD website within 3 days of receipt.

X. PUBLICATION

Publication of this report approved on by:

DocuSigned by:



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KARI ARMIJO, ACTING CABINET SECRETARY
HUMAN SERVICES DEPARTMENT

**HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION****HUMAN SERVICES REGISTER****I. DEPARTMENT**

Human Services Department

II. SUBJECT

Community Services Block Grant (CSBG) State Plan

III. PROGRAMS AFFECTED

Community Services Block Grant (CSBG)

IV. ACTION

Proposed CSBG State Plan

V. BACKGROUND

The Human Services Department is required by the Federal Community Opportunity Accountability Training and Education Services (COATES) Reauthorization Act of 1998 to submit a State Plan to the U.S. Department of Health and Human Services, Office of Community Services in order to receive a grant or allotment for the CSBG program. The Department is required to offer a 30-day comment period for the CSBG State Plan prior to submittal.

VI. PROPOSED STATE PLAN

The proposed CSBG State Plan covers October 1, 2023 to September 30, 2025 and is available on the Human Services Department website at: <https://www.hsd.state.nm.us/wp-content/uploads/FFY-24-Community-Services-BlockGrant-CSBG-State-Plan.pdf>. If you do not have Internet access, a copy of the proposed State Plan may be requested by contacting the Income Support Division's Work and Family Support Bureau (WFSB) at 505-670-4668.

VII. EFFECTIVE DATE

October 1, 2023

VIII. PUBLIC HEARING

A public hearing to receive comments on this proposed plan will be held at 9:00 am on September 1 st, 2023 at the HSD Santa Fe County Field Office which is located at 39-B Plaza La Prensa, Santa Fe, NM 87507.

Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling 505-670-4668.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505- 827-7701 or through the New Mexico Relay system, at 711 or toll free at 1-800-659- 1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

IX. ADDRESS


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Human Services Department
Attn: CSBG Program Manager
P.O. Box 2348
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to: HSD-isdrules@hsd.nm.gov

X. PUBLICATION

Publication of this proposed CSBG State Plan approved on 7/19/2023 by:

DocuSigned by:

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KARIARMIJO, ACTING CABINET SECRETARY
HUMAN SERVICES DEPARTMENT

Continued Next Page

**REGULATION
AND LICENSING
DEPARTMENT
SIGNED LANGUAGE
INTERPRETING PRACTICES
BOARD**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Regulation and Licensing Department, Signed Language Interpreting Practices Board gives Notice of a Minor, Nonsubstantive Correction to 16.28.3 NMAC and 16.28.7 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

For both rules, there was existing, unchanged language that was inadvertently left off the filed version of each cited section. The existing, unchanged language was reinserted in all electronic versions.

16.28.3.11 NMAC:

F. If an applicant submits an incomplete license application they will be requested to submit any missing documentation; failure to do so within six months of receipt of the original application will result in the application file being closed. After the file has been closed, the applicant will be required to submit a new application and application fee to apply again.

G. “Electronic Applications” In accordance with Section 14-16-1 thru 14-16-21 NMSA 1978 of the Uniform Electronic Transactions Act, the board or its designee will accept electronic applications.

(1) Any person seeking a New Mexico signed language interpreting license may do so by submitting an electronic

application. Applicants are required to also submit all required information as stated in 16.28.3.11 NMAC.

(2) Any licensee may renew their license electronically through a designated website provided by the board. All license holders renewing their signed language interpreting license are also required to submit all documentation as stated in 16.28.3.17 NMAC.

(3) Any person whose license has been expired may apply electronically to the board for renewal of the license at any time within 60 days of the expiration. Any persons seeking renewal are also required to submit all supporting documents as stated in 16.28.3.17 NMAC.

(4) Any person whose license has been lapsed may apply electronically to the board for reinstatement of the license at any time. Any persons seeking reinstatement are also required to submit all supporting documents as stated in 16.28.3.17 NMAC.

H. “Electronic Signatures” Electronic signatures will be acceptable for applications submitted pursuant to Sections 14-16-1 through 14-16-19 NMSA 1978.

I. “Administrative Errors” In the event that a community or educational license is issued due to an administrative error, and if the Interpreter is qualified for a provisional license, the permitted five years for the provisional license shall began at the time of the issuance of the erroneously issued license.

16.28.7.10 NMAC:

E. Original and renewed community and educational license shall be valid for a period of two years.

F. Original and completed compliance reviewed provisional license shall be valid for a period of one year, not to exceed four consecutive annual compliance review cycles.

G. Prior to the expiration of the license, all licensed interpreters shall apply for license

renewal and shall pay the renewal fee as set forth in 16.28.6.9 NMAC.

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

**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
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