

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 23 PUBLIC SCHOOL FINANCE - COOPERATIVE AGREEMENTS
PART 3 REGIONAL EDUCATION COOPERATIVES**

6.23.3.1 ISSUING AGENCY: Public Education Department
[12-31-98, 7-30-99; 6.23.3.1 NMAC - Rn, 6 NMAC 11.3.2.1, 06-14-01; A, 11-13-09]

6.23.3.2 SCOPE: 6.23.3 NMAC governs the establishment and procedures for regional education cooperatives
[12-31-98; 6.23.3.2 NMAC - Rn, 6 NMAC 11.3.2.2, 06-14-01]

6.23.3.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2B-3, 22-2B-4, and 22-2B-5 NMSA 1978
[12-31-98; 6.23.3.3 NMAC - Rn, 6 NMAC 11.3.2.3, 06-14-01]

6.23.3.4 DURATION: Permanent
[12-31-98; 6.23.3.4 NMAC - Rn, 6 NMAC 11.3.2.4, 06-14-01]

6.23.3.5 EFFECTIVE DATE: December 31, 1998.
[12-31-98; 6.23.3.5 NMAC - Rn, 6 NMAC 11.3.2.5, 06-14-01]

6.23.3.6 OBJECTIVE: This part establishes minimum criteria for the establishment, operation, and oversight of regional education cooperatives and authorizes the establishment of additional regional education cooperatives if the secretary determines that the establishment and operation of such additional regional education cooperatives will not be detrimental to the delivery of services by the existing regional education cooperatives.
[12-31-98; 6.23.3.6 NMAC - Rn, 6 NMAC 11.3.2.6, 06-14-01; A, 11-13-09]

6.23.3.7 DEFINITIONS

- A. "Council" means a regional education coordinating council.
- B. "Cooperative" means a regional education cooperative as authorized by the secretary pursuant to this rule.
- C. "IDEA-Part B" means Part B of the Education of the Handicapped Act of 1975, amended and redesignated as the Individuals with Disabilities Education Act.
- D. "Local school board" means the governing body of a school district.
- E. "Department" means the public education department.
- F. "Secretary" means the secretary of public education.
- G. "'State agency' or 'state institution'" means an entity enumerated in Section 22-1-2(X) NMSA 1978.

[12-31-98; 6.23.3.7 NMAC - Rn, 6 NMAC 11.3.2.7, 06-14-01; A, 11-13-09]

6.23.3.8 ESTABLISHMENT OF REGIONAL EDUCATION COOPERATIVES

- A. The secretary may authorize the existence and operation of one or more cooperatives.
 - (1) The authorization process is initiated by the receipt of applications and supporting resolutions requesting such authorization by two or more local school boards. By application of their governing authorities, state agencies or state institutions may be included.
 - (2) No local school board or state agency or state institution may be a member of more than one cooperative.
- B. Procedures
 - (1) The department shall develop application procedures consistent with the requirements set forth in this rule. Applications submitted to the secretary requesting authorization for the existence and operation of a cooperative must address the following minimum criteria:
 - (a) an accurate description of the geographical service area of the proposed cooperative;
 - (b) a detailed description of the services contemplated;
 - (c) a detailed description of why the services contemplated cannot be delivered by any currently existing cooperative(s), together with documentation that any existing cooperative(s) within the proposed geographical service area have been consulted regarding the proposed cooperative and the recommendation of the existing cooperative(s) as to the establishment of the proposed cooperative;

(d) a detailed description of the ability of the proposed cooperative to provide the proposed services, including the history of needs within the geographical service area of the proposed cooperative and the historical ability of the applicants to meet those needs;

(e) a description of the management capabilities, including fiscal management, of the proposed cooperative, including the history of needs within the geographical service area of the proposed cooperative and the historical ability of the applicants to meet those needs;

(f) a showing of the commonality of missions among the applicants;

(g) a cost/benefit fiscal analysis of the proposed cooperative;

(h) the proposed budget for the first year of the cooperative's operation;

(i) proposed polices and procedures of the cooperative; and

(j) the acknowledgment by the local school boards and governing authorities of state agencies or state institutions that participation in a cooperative will not relieve said local school boards and governing authorities of state and federal statutory and regulatory responsibilities.

(2) After review of the application, the secretary may request such additional information as he or she deems necessary.

(3) Within ninety (90) days after receipt of the application, the secretary will review the application and will either grant or deny the application for authorization of the cooperative. In making the determination, the secretary will determine whether the authorization of the cooperative is in the best interests of public education in the school districts seeking such authorization and is in the best interests of public education in the state, and will consider the following factors:

(a) relationship of the application to the accreditation status of the applicants;

(b) relationship of the application to educational improvement within the geographical service area of the proposed cooperative;

(c) sufficient size and scope of proposed programs and services;

(d) sufficient management capacity;

(e) sufficient fiscal capacity and management;

(f) relationship of geographical service area to size and scope of proposed programs and services; and

(g) such other factors deemed relevant by the secretary.

(4) Upon authorization by the secretary for the existence and operation of a cooperative, the local school boards and governing authorities of the state agencies or state institutions shall enter into a joint powers agreement. The joint powers agreement, in addition to meeting all requirements of the Joint Powers Agreements Act, shall address those components as may be required by the secretary and shall be subject to the approval of the secretary. The joint powers agreement shall further:

(a) establish a mechanism whereby participating local school boards and governing authorities of state agencies or state institutions electing to cooperatively participate in programs funded by monies other than IDEA-Part B notify the council and the department;

(b) include a provision requiring participating local school boards and governing authorities of state agencies or state institutions desiring to participate in cooperative programs funded by monies other than IDEA-Part B to execute a memorandum of understanding in accordance with requirements established by the department.

C. Changed circumstances

(1) An authorized cooperative shall notify the secretary upon receipt of notice by a local school board or governing authority of a state agency or state institution that said local school board or governing authority wishes to withdraw from membership in the cooperative.

(a) The secretary will review the cooperative and will determine whether said cooperative will continue to meet the criteria established in Subsection B, Paragraph (3) of 6.23.3.8 NMAC.

(b) If the secretary determines that the cooperative will no longer meet the criteria established in Subsection B, Paragraph (3) of 6.23.3.8 NMAC, the secretary may order the dissolution of the cooperative.

(2) An authorized cooperative shall further notify the secretary upon receipt of notice by a local school board or governing authority of a state agency or state institution that the local school board or governing authority wishes to establish membership in the cooperative.

(a) The secretary will review the cooperative and will determine whether said cooperative will continue to meet the criteria established in Subsection B, Paragraph (3) of 6.23.3.8 NMAC.

(b) If the secretary determines that the cooperative will continue to meet the criteria established in Subsection B, Paragraph (3) of 6.23.3.8 NMAC, the secretary will allow the requesting entity(ies) to participate and will establish the terms thereof.

[12-31-98; 6.23.3.8 NMAC - Rn, 6 NMAC 11.3.2.8, 06-14-01; A, 11-13-09]

6.23.3.9 REGIONAL EDUCATION COORDINATING COUNCIL

A. Each cooperative shall be governed by a regional education coordinating council ("council").

(1) Each council will develop and adopt by-laws for the purpose of the governance of the cooperative.

(2) The by-laws shall include the following provisions:

- (a) procedures for electing a council chairperson;
- (b) the term of office for the council chairperson;
- (c) procedures to establish any committees the council may deem necessary or desirable; and
- (d) procedures to amend the by-laws as the council deems necessary or desirable.

(3) The council shall be composed of the superintendents or chief administrative officers of each local school district or state agency or state institution participating in the cooperative.

(4) Members of each council shall elect a chairperson from its members.

(5) Meetings of the council shall be held at the call of the chairperson, subject to the council's open meetings policy and the Open Meetings Act, Sections 10-15-1 through 10-15-4, NMSA 1978.

(6) A meeting of a majority of the members of the council constitutes a quorum for the purpose of conducting business.

B. The council shall oversee the operation of the cooperative and shall develop a manual of policies and procedures governing the operation of the cooperative. At the direction of the council, the cooperative shall provide:

- (1) education-related services to members of the cooperative;
- (2) technical assistance and staff development opportunities to members of the cooperative;
- (3) cooperative purchasing capabilities and fiscal management opportunities to members of the cooperative;
- (4) such additional services to participating entities as may be determined by the council to be appropriate; and
- (5) revenue-generating education-related services to nonmembers when the council determines that the provision of such services will not interfere with the cooperative's ability to fulfill its responsibilities to its members.

C. The council shall have such other powers and duties as are reasonably necessary to carry out the purpose of the Regional Cooperative Education Act, Sections 22-2B-1 through 22-2B-5 NMSA 1978 and which are not inconsistent with the provisions of applicable state or federal statutes or regulations.

D. Each council shall hire an executive director and necessary additional staff and, subject to the provisions of law, fix the salaries of all employees.

(1) The council shall ensure that all employees meet all applicable certification or licensure requirements.

(2) The council shall further ensure that all applicable provisions of the School Personnel Act, Chapter 22, Article 10A NMSA 1978 are adhered to and reflected in its policies and procedures.

(3) The council shall include within its policies and procedures the following policies relating to employees:

- (a) the salary schedule(s) for all employees of the cooperative;
- (b) policies related to the accrual and utilization of leave by employees; and
- (c) policies relating to performance evaluations of employees.

(4) The administrative and supervisory functions of the council shall be delegated to the executive director.

(5) The council shall, subject to the provisions of law, approve or disapprove the employment, termination, or discharge of all employees and certified school personnel of the cooperative upon a recommendation of employment, termination, or discharge by the executive director. Any employment, termination, or discharge without the prior recommendation of the executive director is void.

[12-31-98; 6.23.3.9 NMAC - Rn, 6 NMAC 11.3.2.9, 06-14-01; A, 11-13-09]

6.23.3.10 ACCOUNTABILITY

A. Fiscal and budget accountability

(1) The department shall develop procedures for personnel and program reporting for the cooperative(s). Each cooperative shall be required to adhere to such procedures. The reporting shall include the cooperative's evaluation of the effectiveness of the technical assistance and other services provided to members of the cooperative and to any nonmember public and private entities to which the cooperative provided educational services.

(2) The department shall develop procedures for budgets and fiscal reporting. Each cooperative shall be required to adhere to such procedures. Such procedures shall ensure compliance with the requirements of all applicable state and federal statutes and regulations.

(3) The department shall establish procedures, including timelines, for the preparation of cooperative budgets and the approval of said budgets by the department. Each cooperative shall be required to adhere to such procedures.

(4) The cooperative shall assure compliance with the provisions of the Procurement Code, Sections 13-1-28 et seq. NMSA 1978.

(5) The cooperative shall assure compliance with all applicable department of finance and administration regulations.

B. The department shall further develop procedures to ensure that the cooperatives are assessed and evaluated in accordance with the applicable requirements of Section 22-2-2(F) NMSA 1978.

[12-31-98; 6.23.3.10 NMAC - Rn, 6 NMAC 11.3.2.10, 06-14-01; A, 11-13-09]

6.23.3.11 ENFORCEMENT OF REQUIREMENTS

A. The secretary shall give written notification to a cooperative and its member entities of any failure of the cooperative to meet applicable requirements in any of its programs or activities. The notice shall specify the deficiency. Within thirty days after receipt of the notice of failure to meet requirements, the council shall:

- (1) comply with the specific and attendant requirements; or
- (2) submit plans satisfactory to the secretary to meet such requirements.

B. The secretary shall suspend from authority and responsibility any council which has had notice of deficiency(ies) pursuant to Subsection A of 6.23.3.11 NMAC and fails to comply with procedures set forth in Subsection A, Paragraphs (1) and (2) of 6.23.3.11 NMAC. The secretary or the secretary's designee shall act in lieu of the suspended council until the suspension is removed.

C. To suspend a council, the secretary shall deliver to the council an alternative order of suspension, stating the cause for the suspension and the effective date and time the suspension will begin. The alternative order shall also contain notice of a time, date, and place for a public hearing, prior to the beginning of suspension, to be held by the secretary or the secretary's designee, at which the council may appear and show cause why it should not be suspended. Within five days after the hearing, the secretary shall continue, modify or withdraw the alternative order.

D. Within one-hundred eighty (180) days after the entry of the order of suspension, the secretary shall withdraw the order of suspension or continue the order of suspension for an additional period of up to one-hundred eighty (180) days.

(1) Upon the secretary's withdrawal of the order of suspension, the council shall be restored to its full authority and responsibility.

(2) Upon the secretary's determination that the order of suspension be continued for an additional period of up to one-hundred eighty (180) days, the secretary shall afford the council the opportunity for a hearing within a reasonable time. At this hearing, the council may appear and show cause why the order of suspension should not be continued. After the hearing, the secretary shall continue the order of suspension for a period not to exceed one-hundred eighty (180) days or withdraw the order of suspension.

E. Within one-hundred eighty (180) days after the entry of an order of continued suspension pursuant to Subsection D, Paragraph (2) of 6.23.3.11 NMAC, the secretary shall determine that the order of suspension be withdrawn or that the council should appear and show cause why the order of suspension should not be made permanent. Upon the secretary's determination that the order of suspension be withdrawn, the council shall be restored to its full authority and responsibility. Upon the secretary's determination that the council should appear and show cause why the order of suspension should not be made permanent, the secretary shall afford the council the opportunity for a hearing within a reasonable time. At this hearing, the council may appear and show cause why the order of suspension should not be made permanent. After the hearing, the secretary shall withdraw the order of suspension or make the order of suspension permanent. A permanent order of suspension shall result in the dissolution of the cooperative.

[12-31-98; 6.23.3.11 NMAC - Rn, 6 NMAC 11.3.2.11, 06-14-01; A, 11-13-09]

6.23.3.12 FUNDING SOURCES

A. Funding sources may include funds from federal grant allocations and general revenues of the membership and revenue from revenue-generating education-related services to nonmembers.

B. With council approval, a cooperative may apply for and receive public and private grants, gifts, donations, bequests and devises and use them to further the purposes and goals of the cooperative.

C. All revenues shall be received by the cooperative and budgeted in accordance with procedures established by the department in accordance with Subsection A, Paragraph (2) of 6.23.3.10 NMAC.

[12-31-98; 6.23.3.12 NMAC - Rn, 6 NMAC 11.3.2.12, 06-14-01; A, 11-13-09]

HISTORY OF 6.23.3 NMAC:

PRE-NMAC HISTORY: The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives under SBE Regulation 93-23, Relating to Regional Education Cooperatives, 11/3/93.