

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 68 SCHOOL PERSONNEL - DENIAL, SUSPENSION, AND REVOCATION OF
LICENSE
PART 2 DENIAL OF APPLICATIONS FOR LICENSES FOR SCHOOL PERSONNEL

6.68.2.1 ISSUING AGENCY: Public Education Department (PED)
[6.68.2.1 NMAC - Rp, 6 NMAC 4.2.4.4.1, 11-30-05; A, 01-29-10]

6.68.2.2 SCOPE: This rule governs the denial of applications for licenses and certificates for school personnel enumerated in Section 22-10A-3A NMSA 1978.
[6.68.2.2 NMAC - Rp, 6 NMAC 4.2.4.4.2, 11-30-05]

6.68.2.3 STATUTORY AUTHORITY: Sections 22-2-1B, NMSA 1978; 22-2-2J, K, NMSA 1978; 22-10A-31, NMSA 1978; and 61-1-1 et seq., NMSA 1978.
[6.68.2.3 NMAC - Rp, 6 NMAC 4.2.4.4.3, 11-30-05]

6.68.2.4 DURATION: Permanent
[6.68.2.4 NMAC - Rp, 6 NMAC 4.2.4.4.4, 11-30-05]

6.68.2.5 EFFECTIVE DATE: November 30, 2005, unless a later date is cited at the end of a section.
[6.68.2.5 NMAC - Rp, 6 NMAC 4.2.4.4.5, 11-30-05]

6.68.2.6 OBJECTIVE: This rule, adopted by the PED, governs the application process for initial issuance or continuing licensure of all types of licenses and certificates issued by the PED, as well as the denial of such applications. Applicants must also meet all requirements prescribed in PED rules governing each type and level of license or certificate sought.
[6.68.2.6 NMAC - Rp, 6 NMAC 4.2.4.4.6, 11-30-05; A, 01-29-10]

6.68.2.7 DEFINITIONS:

A. "Continuing education requirements" when used in regards to teachers means meeting the high objective uniform statewide standard of evaluation for the type and level of licensure for which an applicant has applied as set forth in 6.69.4.11 NMAC and required under Subsection B of 22-10A-10 NMSA or Subsection B of 22-10A-11.3 NMSA 1978, depending upon the license held. When used in regard to school administrators, the term means meeting the high objective uniform statewide standard of evaluation under Subsection E of 22-10A-11 NMSA 1978, or all of the requirements for provisional licensure for school principals in 22-10A-11.3 NMSA 1978, depending upon the license held.

B. "Criminal history" means convictions of any felonies or misdemeanors of moral turpitude, or other information concerning a person's arrests, indictments, other formal criminal charges and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the FBI, the national law enforcement telecommunications system, the New Mexico department of public safety (NMDPS), or the repositories of criminal history information of other states.

C. "Denial of application" means the PED's rejection of an individual's properly made application for initial or continuing licensure due to incompetency, immorality, failure to satisfy the PED's licensure requirements, failure to demonstrate the competencies required for the level of licensure sought, or for any other good and just cause including, but not limited to, any of the grounds set forth in this rule.

D. "Ex parte communications" means any oral, written or electronic communications between one party (or their attorney) and the hearing officer, or as between one party (or their attorney) and the secretary of the PED, (secretary), that occur out of the presence or without the consent of the opposing party (or their attorney). Communications included in this definition, in addition to direct communications, include indirect communications as where a party requests or suggests to a non-party to contact the hearing officer or the secretary on any matter and for any reason related to a pending licensure case where a notice of contemplated action has been served on an applicant for licensure pursuant to this rule. Ex parte communications also occur when individuals sympathetic to one party make oral, written or electronic communications to the hearing officer or the secretary that occur out of the presence or without the consent of the opposing party (or their attorney) in any matter and for any reason related to a pending licensure case where a notice has been served on an applicant for licensure pursuant to this rule.

E. "Licensure" means a license issued by the PED authorizing a person to teach, supervise an instructional program, counsel, provide special instructional services, coach, provide health care, administer medication, perform medical procedures, or administer in the public schools of the state. A certificate and license issued by the PED are one and the same.

F. "Properly made application" means an application for initial licensure or continuing licensure that has been filled out in full and for which all the required fees and documentation, including but not limited to background information and official transcripts, have been submitted. In addition, a properly made application means the applicant must have fulfilled all academic requirements for the type and level of licensure sought.

G. "Superintendent" means the chief licensed administrator of a public school district and in the case of a state agency or private school, the governing authority of that agency or private school.

H. "Transcript of the hearing" means a verbatim copy of the statements made by anyone during hearings held under 6.68.2.15 NMAC of this rule and the Uniform Licensing Act, NMSA 1978, 6-1-1et seq. (hereinafter, "ULA"). A transcript may be either stenographically recorded or tape recorded.
[6.68.2.7 NMAC - Rp, 6 NMAC 4.2.4.4.7, 11-30-05; A, 01-29-10]

6.68.2.8 APPLICATIONS FOR LICENSURE-COMPLETION OF FILE AND REAPPLICATION:

A. The professional licensure bureau, PLB of the PED shall prescribe the form(s) for applications for initial and continuing licensure of school personnel in New Mexico.

B. All applicants for initial or continuing licensure shall meet the requirements of PED rules governing the type(s) and level(s) of license(s) sought that are in effect on the date an application on the prescribed form is received by the PLB regardless of the expiration date on any existing license they may hold.

C. Individuals requesting continuing licensure must submit a request in writing on the current form prescribed by the PLB by the June 30 expiration date of such license(s). However, a licensed individual shall have a one-year grace period from the date of expiration to apply for continuing licensure. Notwithstanding the foregoing, an individual whose license has expired on June 30 and is employed for the coming school year must have submitted a properly made application within 90 days of commencing their school employment duties for that year in accordance with Subsection C of Section 22-10A-3 NMSA 1978. Moreover, in no event shall the application for continuing licensure be submitted sooner than January 1 of the expiration year.

D. An application for initial or continuing licensure shall be valid for one year from receipt, during which time the applicant must ensure that the PLB has a properly made application with all the information necessary to determine their qualifications for the license(s) and level(s) sought therein. When the PLB reviews an application and determines that it is improperly made, it shall notify the applicant regarding what is required for the application to be properly made. If an application remains improperly made for one year from the date of receipt, the application shall expire without any further action required by the PED.

E. Once an application for initial or continuing licensure expires, the applicant seeking licensure shall be required to file a new application for licensure for the license(s) and level(s) sought and to pay the initial application fee. Such individual must qualify under existing PED rules as of the date of the new application. However, this subsection does not affect individuals filing for continuing licensure during the one-year grace period granted in Subsection C of 6.68.2.8 NMAC.

[6.68.2.8 NMAC - Rp, 6 NMAC 4.2.4.4.8, 11-30-05; A, 01-29-10]

6.68.2.9 FAILURE TO SATISFY LICENSURE REQUIREMENTS:

A. The PLB shall deny any properly made application for initial or continuing licensure as defined in Subsection F of 6.68.2.7, where an applicant has failed to satisfy all testing or competency requirements specified in PED rules governing the type(s) and level(s) of licensure sought.

B. An aggrieved applicant may request that the secretary review the denial of a license or continuing licensure for failure to satisfy prescribed continuing education or academic requirements. The secretary shall have sixty (60) days from the date of the request to review the denial and render a decision. The secretary's decision on review shall be final.

C. An applicant for initial or continuing licensure who has taken all required examinations and whose properly made application has been denied shall be afforded all the procedural and substantive due process rights contained in this rule, 6.68.2 NMAC and the ULA, Section 61-1-1 NMSA 1978, except applications denied for the following reasons:

- (1) failure to pass a required examination;
- (2) failure to pay the required application fee;

- (3) failure to meet continuing education requirements as defined in Subsection B of 6.68.2.7 NMAC;
- or
- (4) issuance of a temporary license extension if authorized by the School Personnel Act, Section 22-10A-1, NMSA 1978.
[6.68.2.9 NMAC - Rp, 6 NMAC 4.2.4.4.9, 11-30-05; A, 01-29-10]

6.68.2.10 DENIAL OF APPLICATIONS:

A. Other grounds for denial of applications: Subject to the procedures set forth below, the educator ethics bureau (EEB), or the PLB may deny an application for initial or continuing licensure for incompetency, immorality or for any other good and just cause. "Other good and just cause" may include but shall not be limited to any of the following:

- (1) a material misstatement of fact by an applicant in connection with the initial licensure application process or the continuing licensure application process; or
- (2) the denial of an application for licensure or the suspension or revocation of an applicant's educational or other relevant professional certificate(s) or license(s) by the certification or licensing authorities of this or any other state or by a national licensing board or bureau; or
- (3) material noncompliance with any provision(s) of PED rules prescribing the terms and conditions of employment contracts for licensed school personnel in New Mexico at a time when the person charged was subject to those rules; or
- (4) a willful violation of any PED rule prescribing standards of conduct for licensed school personnel at a time when the person charged was subject to such requirement; or
- (5) a conviction of any felony or a misdemeanor involving moral turpitude, subject to the provisions of the Criminal Offender Employment Act, Section 28-2-1, et seq., NMSA 1978; or
- (6) a failure to comply with a judgment and order for support pursuant to the Parental Responsibility Act, Section 40-5A-1, NMSA 1978; or
- (7) the intentional alteration of any college transcripts or any license issued by the PED in connection with any private or public employment or in any dealings with the PED; or
- (8) the failure or refusal by an applicant for licensure with a criminal history to timely provide documents requested by the PED evidencing applicant's rehabilitation, satisfaction of court orders or successful termination of probation; or
- (9) failing to meet the continuing education requirements for level 2 competencies where a local superintendent recommends to the secretary that the teacher's level 2 license be suspended in accordance with 6.69.4 NMAC.

B. Reporting requirements: Every school superintendent or the person designated by the governing authorities of state agencies, private schools or charter schools shall provide written notification to the director of EEB or PLB (director) of purported facts reasonably believed by a superintendent to constitute grounds under this rule for denial of an educator license or continuing licensure. At a minimum, the written notification shall include the name and address of the individual, the personnel action taken by the school district, if any, and a statement of reasons for the action. The following are not justifications for failing to report this information to the director: whether or not the personnel action is final; whether or not the personnel action was taken by a different school district; whether or not the licensed person resigned from a different school district pending investigation for misconduct; whether or not a person has been licensed for three (3) or more years; whether or not any adverse personnel action is/was reversed. Written notification shall be made to the director within 30 calendar days of the sooner of any adverse personnel action or discovering purported facts reasonably believed to constitute grounds for licensure denial. Failure of a superintendent to provide such written notification to assist the PED's licensure process shall not bar the PED from denying an application or serving notice on an applicant.

C. Recommendation for denial of application.

- (1) If the director of the EEB or PLB concludes that sufficient grounds exist under Subsection A of 6.68.2.10 NMAC to serve a notice on the applicant, the procedures set forth in 6.68.2.12 NMAC shall be initiated subject to the approval of the assistant secretary for educator quality. In all other cases, the license(s) applied for shall be issued unless the applicant fails to qualify as provided in 6.68.2.9 NMAC or in Paragraph (2) of Subsection C below.
- (2) If a statement from a local superintendent that an applicant has failed to satisfactorily demonstrate the competencies required by the PED for the level of license sought or held is received by the director of the PLB pursuant to Subsection A of 6.68.2.11 NMAC, the following procedures shall be followed unless the applicant otherwise fails to qualify pursuant to 6.68.2.9 or Subsection A of 6.68.2.10 NMAC:

- (a) the director shall review the local superintendent's finding that the applicant has not satisfactorily demonstrated the required competencies for the level of license sought or held; and
 - (b) if the director finds substantial evidence that the superintendent or governing authority failed to comply with 6.68.2.11 NMAC, the director shall issue the license; or
 - (c) if the director finds that the local superintendent has complied with 6.68.2.11 NMAC and the applicant is either a level 1 licensee who is completing the fifth (5th) and final year of level 1 or a level 2 or 3 licensee who is subject to losing their level 2 or 3 licensure, then the director shall cause the notice, pre-hearing, hearing and secretary review procedures set forth in 6.68.2.12 NMAC and the ULA to be initiated. In all other cases where the director finds that the local superintendent has complied with 6.68.2.11 NMAC, the director shall notify the applicant of that finding within 14 days and the applicant shall then have 30 days to request that the secretary review the director's finding. In such case, the secretary shall have 30 days to review the director's finding and the secretary's decision shall be final.
- [6.68.2.10 NMAC - Rp, 6 NMAC 4.2.4.4.10, 11-30-05; A, 01-29-10]

6.68.2.11 PROCEDURES REQUIRED OF A LOCAL SCHOOL BOARD OR GOVERNING AUTHORITY BEFORE GIVING NOTICE TO THE DIRECTOR OF THE PROFESSIONAL LICENSURE BUREAU THAT AN APPLICANT HAS NOT SATISFACTORILY DEMONSTRATED THE COMPETENCIES REQUIRED FOR THE LEVEL OF LICENSURE SOUGHT:

- A. Before notice is given to the director of the PLB that an applicant has not satisfactorily demonstrated the competencies required for the level of licensure sought, the following procedures must be followed:
 - (1) two (2) or more conferences shall have been held with the licensed school person prior to the serving of such notice, and
 - (2) at least one (1) conference shall be held with the individual's most recent performance evaluator, or immediate supervisor if the most recent performance evaluator is unavailable to confer with the individual, and another conference shall be held with the superintendent of the local school district or with the superintendent's designee who shall be someone other than the first person with whom the licensed individual has conferred, and
 - (3) at least ninety (90) school days shall have elapsed between the conferences to allow the individual sufficient time to satisfactorily demonstrate the required competencies.
 - B. A written record of all conferences shall be made, specifying the competency or those competencies that have not been satisfactorily demonstrated, the action suggested by the school or agency or private school administration, which might lead to satisfactory demonstration of such competency or competencies, and the results attained. Each written record shall be signed by all parties to the conference. In the event of refusal to sign, a notation shall be made of the refusal. A copy of each record shall be given to the individual.
 - C. The superintendent or the person designated by the governing authority of a state agency or private school shall, in the event of notifying the educator of their failure to satisfactorily demonstrate the required competencies, supplement such notice with copies of the records required pursuant to Subsection B of 6.68.2.11 NMAC together with any policies described in Subsection D of 6.68.2.11 NMAC.
 - D. Local school boards or the governing authorities of state agencies or private schools may develop policies concerning procedures required before giving notice to the director of the PLB that an applicant has not satisfactorily demonstrated the competencies required for the level of licensure sought; provided, however, that such procedures must include at a minimum those requirements set forth in Subsections A through C of 6.68.2.11 NMAC.
- [6.68.2.11 NMAC - Rp, 6 NMAC 4.2.4.4.11, 11-30-05; A, 01-29-10]

6.68.2.12 PROCEDURES FOR DENYING APPLICATIONS: The following procedures shall govern the denial of properly made applications for initial or continuing licensure on any ground specified in Subsection A of 6.68.2.10 NMAC except for those applications noted in Subsection B of 6.68.2.9 NMAC and Paragraphs (1) through (4) of Subsection C of 6.68.2.9 NMAC.

- A. Notice: The director of the EEB, or the director of the PLB, on behalf of the PED shall prepare and serve upon the applicant a written notice of contemplated action.
- B. Service of notices: Any notice required to be served by this rule, including notice of final decision, may be served either personally or by certified mail, return-receipt-requested, directed to the applicant at their last known address as shown by the records of the licensure bureau or to the applicant's attorney of record. Service must be no later than two (2) years after the discovery of the conduct that would be the basis of the contemplated action, except that the time limitation shall be tolled by any civil or criminal litigation in which the

applicant is a party arising from substantially the same facts, conduct or transaction that would be the basis for the PED's action. If the notice or decision is served personally, service shall be made in the same manner as is provided for service by the rules of civil procedure for the district courts. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery.

C. Contents: The notice shall contain:

(1) the grounds, including in what respects the applicant has failed to satisfy the PED, believed to be sufficient for denying the application;

(2) instructions for requesting a hearing before the PED in accordance with Subsection A of 6.68.2.13 below;

(3) a statement that the PED's contemplated action will be taken and shall become final unless the charged individual requests a hearing according to the procedure and within the time specified, and that such action would not be subject to judicial review; and

(4) a statement calling the applicant's attention to their rights under this rule and the ULA, Section 61-1-8, NMSA 1978 copies of which shall be provided with the written notice.

D. Copies of notice: If the applicant is employed by a local school district in New Mexico, a copy of the notice shall be sent by the PED, to the local school superintendent of the district employing or seeking to employ the applicant if known, unless the applicant is the said superintendent, in which case the president of the local school board shall be sent a copy of the notice.

[6.68.2.12 NMAC - Rp, 6 NMAC 4.2.4.4.12, 11-30-05; A, 01-29-10]

6.68.2.13 PRE-HEARING PROCEDURES:

A. Filing of request for hearing: An applicant shall initiate a request for hearing by filing a timely, written request for hearing with the PED, by delivery of such request to the PED's office of the secretary in Santa Fe, New Mexico. Such request must be sent by certified mail, return-receipt-requested within twenty (20) days after service of the notice on the applicant.

B. If a hearing is requested, the PED, within twenty (20) days of receipt of the request, shall notify the applicant of the time and place of the hearing, the name, address and telephone number of the person who shall conduct the hearing for the PED and the statutes and rules authorizing the PED to take the contemplated action, which hearing shall be held not more than sixty (60) nor less than fifteen (15) days from the date of service of said notice.

C. Failure to request a hearing: If the applicant does not make a timely written request for a hearing, the PED may take the action contemplated in the notice and such action shall be final.

D. Appointment of a hearing officer

(1) All hearings may be conducted by a hearing officer who shall be a duly licensed New Mexico attorney, but who shall not be any attorney then employed by the office of general counsel of the PED. Upon receipt of the request for a hearing, the director of the EEB or the PLB shall appoint the hearing officer. Any hearing officer appointed to serve on a case shall at all times be held to the same ethical standards of impartiality that are set forth in Subsection B of Section 21-300 of the New Mexico code of judicial conduct. The hearing officer may issue a pre-hearing order limited to: setting deadlines for the exchange of documents intended to be introduced; setting deadlines for the exchange of a list of the name, address and telephone number of each witness a party intends to call during the hearing; ordering the applicant to have their attorney, if any, file within thirty (30) days a written notice of appearance with the hearing officer with a copy to opposing party; and cautioning the parties of their need to comply with Subsection G of 6.68.2.13 NMAC below. If either party requests a pre-hearing conference with the hearing officer, such conference shall be scheduled by the hearing officer and be held telephonically unless both parties agree to meet in person.

(2) The hearing officer shall have the power:

(a) to have counsel to develop the case; to administer oaths or affirmations to witnesses called to testify; to take testimony; to examine witnesses; and to direct a continuance of any case; hearing officers may also hold conferences before or during the hearing for the settlement or simplification of the issues but such settlement or simplification shall only be with the consent of the applicant;

(b) to hear pre-hearing motions; the hearing officer shall issue a written order with a copy to both parties on any pre-hearing motion filed by a party;

(c) to subpoena, for purposes of discovery and of the hearing, witnesses and relevant books, papers, documents and other evidence in compliance with Rule 1-045A to D of the rules of civil procedure and New Mexico civil form 4-505; a party may also issue such subpoenas with the approval of the hearing officer;

(d) to impose any appropriate evidentiary sanction against a party who fails to provide discovery or to comply with a subpoena; such sanctions could include the striking of a witness or the striking of documentary evidence;

(e) to take notice of judicially cognizable facts as well as of general, technical or scientific facts within their specialized knowledge so long as the applicant is notified either before or during the hearing of the fact so noticed and its source, and is afforded an opportunity to contest said fact; and

(f) to impose costs on the applicant upon motion of the PED.

E. Discovery:

(1) Rules of discovery provided in Rules 26 through 37 (26-37) of the New Mexico rules of civil procedures shall apply, except that all deadlines for responding to requests for admissions, interrogatories, and requests for production of documents shall be within ten (10) days of the delivery of the request. No such request shall be made less than fifteen (15) days before the hearing.

(2) Upon written request to another party, any party is entitled to:

(a) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(b) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

(3) Any opposition to any pre-hearing motion filed by a party shall be filed within ten (10) days of the service of that motion on the other party.

(4) This rule does not authorize either party to seek discovery sanctions or relief from a district court.

(5) Any party may take depositions after service of notice in accordance with the rules of civil procedure for the district courts. Depositions may be used as in proceedings governed by those rules.

F. Pleadings: Parties shall serve copies of all pleadings on each other and the hearing officer shall sign and date each pleading and shall include a signed and dated certificate of service with their pleadings.

G. Ex parte communications: Neither party nor their attorney shall engage in ex parte communications with any hearing officer appointed to hear a case or with the secretary on any matter regarding a pending case. Likewise, a hearing officer shall not engage in ex parte communications with either party or their attorney on any case to which that hearing officer has been appointed. However, there may be occasions when brief ex parte communications are warranted, for example, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits. A summary of what was communicated shall be promptly disclosed to the individual who did not participate in the ex parte communication. The secretary shall not engage in any ex parte communication with any party, attorney or interested person on any matter or for any reason related to a pending licensure denial or other disciplinary action case where a notice of contemplated action has been served on an licensee pursuant to this rule.

[6.68.2.13 NMAC - Rp, 6 NMAC 4.2.4.4.13, 11-30-05; A, 01-29-10]

6.68.2.14 RIGHTS OF AN APPLICANT:

A. An applicant shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both at no expense to the PED; to present all relevant evidence by means of witnesses and books papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the hearing officer.

B. An applicant shall have the right to excuse the hearing officer in accordance with ULA Section 61-1-7, NMSA 1978.

[6.68.2.14 NMAC - N, 11-30-05; A, 01-29-10]

6.68.2.15 HEARING:

A. Purpose: The purpose of the hearing shall be to determine whether sufficient grounds exist for the denial of an initial license application or continuing licensure application by the PED. The burden of proof shall be upon the PED to establish by a preponderance of the evidence that sufficient grounds exist.

B. Venue of hearing: The hearing shall be conducted in the county where the PED maintains its office. In any case, however, the applicant and the PED may agree that the hearing is to be held in some other county.

C. Conduct of hearings

(1) The order of presentation of evidence shall be as follows: The PED shall present evidence in an attempt to establish that sufficient grounds exist for the denial of the applicant's initial or continuing licensure. Thereafter, the applicant may present evidence in defense. The hearing officer may allow rebuttal evidence and closing arguments.

(2) The rules of civil procedure and the rules of evidence shall not apply to the hearing, except as specifically provided in this rule, but it shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, the hearing officer shall permit each party to call and examine witnesses, cross-examine witnesses and introduce exhibits. Documentary evidence may be received in the form of copies or excerpts. Evidence will be admitted without regard to technical rules of evidence, but the hearing officer may exclude any evidence, which is not relevant to the issues and may require reasonable substantiation of statements or records where accuracy or truth is in reasonable doubt. Any evidence may be admitted that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may in their discretion exclude incompetent, irrelevant, immaterial, or unduly repetitious evidence. Rules of privilege shall be applicable to the same extent as in proceedings before the courts of this state. Parties or their attorneys may make timely objections to the introduction of any evidence they view as inadmissible under this paragraph.

(3) A complete record shall be made of all evidence received during the course of the hearing. The record shall be preserved by any stenographic method in use in the district courts of this state, or in the discretion of the PED, by tape recording. The PED shall observe any standards pertaining to tape recordings established for the district courts. In any event, the PED shall have one (1) copy of the transcript or tape recording of the hearing for the secretary's review in rendering a final decision. Where judicial review is sought, the costs of required transcripts or tape recordings shall be paid by the party seeking review.

(4) All witnesses shall swear or affirm that their testimony will be truthful. A person authorized to administer oaths shall swear each witness. The hearing officer may determine the capacity of a witness to testify and may consider capacity in determining the weight of the evidence. The hearing officer may refuse to admit testimony from a proposed witness who is found lacking capacity.

(5) The hearing officer may require post-hearing briefs to be submitted by the parties. Such briefs shall not exceed 20 pages in length, double-spaced, exclusive of attachments, and shall be on paper eight and one-half by eleven inches in length.

D. If an applicant fails to appear at a hearing and no continuance has been granted, the hearing officer may hear the evidence of such witnesses as may have appeared and proceed to consider and dispose of the case on the basis of the evidence before the hearing officer in the manner required under this rule. Where an applicant fails to appear for a hearing or fails to request a hearing due to sickness, accident or other good cause, such licensee may apply to the hearing officer where he failed to appear, or to the PED where he failed to request a hearing, to reopen the proceeding, and upon finding such cause sufficient, the hearing officer or the PED, as the case may be, shall schedule a hearing and give the applicant notice of such as required by this rule. The hearing officer may require evidence to prove licensee's good cause in such cases.

E. Continuing jurisdiction

(1) Despite the expiration of an applicant's licensure, the PED shall continue to have jurisdiction to hear a case under this rule where the individual whose licensure expired was served a notice of contemplated action prior to the expiration of the licensure.

(2) The service of such notice upon an applicant shall act to stay the expiration of licensure where that individual's licensure was scheduled to expire and would expire during a proceeding to deny continuing licensure under this rule but for the stay of the expiration.

(3) Where the secretary issues a final order in which the applicant's licensure is not outright denied, then the individual shall be permitted to renew their licensure as though it expired on the original expiration date as long as the applicant satisfies all other licensure requirements for the level and type of license sought.

[6.68.2.15 NMAC - Rp, 6 NMAC 4.2.4.4.14, 11-30-05; A, 01-29-10]

6.68.2.16 THE HEARING OFFICER'S REPORT TO THE SECRETARY:

A. The parties' proposals: The hearing officer shall afford the applicant and the PED an opportunity to file proposed findings of fact and conclusions of law by a deadline specified by the hearing officer not to exceed thirty (30) days from the closing of the hearing. The hearing officer may include in or exclude from their report to the secretary any portions of the parties' proposed findings, conclusions or order as the hearing officer deems are supported or not supported by the evidence presented at the hearing. Moreover, the hearing officer may revise the submitted proposed findings and conclusions and make other findings and conclusions as the hearing officer deems are supported by the evidence at the hearing. No party shall submit post-hearing briefs or proposed findings of fact

and conclusions of law after the deadline imposed unless leave to file late is granted by the hearing officer for good cause shown.

B. Contents: After the hearing officer's deadline has elapsed, the hearing officer shall submit a formal written report to the secretary consisting of the following labeled paragraphs: statement of the case, legal issues, proposed findings of fact, proposed conclusions of law, and order proposed by the hearing officer. The hearing officer shall limit their proposed order to: denial of the application, acceptance of the application with a condition other than the payment of money, or acceptance of the application.

C. In any denial action of an individual's application for licensure brought under authority of the Parental Responsibility Act where the hearing officer recommends a denial of that individual's license, the hearing officer shall limit their proposed findings, conclusions or order to the issues of whether a certified list of obligors from the human services department (HSD) has been submitted indicating that individual as being in non-compliance of a district court child support order, and whether the HSD has provided to the PED a certified statement that the charged individual is presently in compliance with that order. The hearing officer and the secretary shall defer to any district court child support order directed to the PED relative to an applicant's educator license(s).

D. Time limits: The hearing officer's report along with the parties' briefs and proposed findings of fact and conclusions of law and order, if any, shall be received by the secretary through the office of general counsel, within thirty (30) days after the deadline specified by the hearing officer for the parties' submission of proposed findings of fact and conclusions of law. The secretary may extend this time upon request of the hearing officer through the office of general counsel so long as the decision of the secretary is rendered and signed within ninety (90) days after the conclusion of the hearing. The hearing officer shall serve a copy of the report directly on the parties to the hearing, or upon their attorneys, if any, on the same day the hearing officer serves the secretary.

E. The hearing officer's report shall be considered a privileged communication between the PED's hearing officer and the secretary not subject to public inspection until the secretary has reviewed the report and rendered a final decision.

[6.68.2.16 NMAC - N, 11-30-05; A, 01-29-10]

6.68.2.17 DECISION OF THE SECRETARY:

A. The secretary shall review the report of the hearing officer together with any briefs or proposed findings/conclusions/orders timely submitted by the parties. The secretary shall render a final decision and order based on a preponderance of the evidence. The secretary's decision must include a statement informing the applicant of their right to judicial review and the time within which such review must be sought. The secretary shall either:

- (1) adopt the hearing officer's proposed findings of fact, conclusions of law and order;
- (2) modify said findings of fact and conclusions of law and order and render a decision;
- (3) reopen the case to receive additional evidence or for other cause on request from the applicant or on the secretary's own motion; and where a request to reopen the case comes from the applicant, the secretary shall serve upon the applicant within fifteen (15) days after receipt of said request, a decision to grant or refuse said request; and where the case is reopened, notice of the hearing shall be served on the applicant within fifteen (15) days after service of the decision to reopen with the hearing being held within forty-five (45) days after the service of said notice and the decision from the hearing being served on the applicant within thirty (30) days after the hearing; or
- (4) reject any action against the applicant's licensure application on the grounds alleged and order the individual's application review to go forward to determine if the applicant is otherwise qualified for licensure or continuing licensure; if the secretary decides to hear additional evidence, a transcript of the proceedings shall be made by a qualified court reporter or a tape recording.

B. The secretary is not an appellate reviewer of the hearing officer's proposed findings/conclusions/order. Rather, the secretary is ultimately responsible for issuing a final decision and order relative to possible disciplinary action against an applicant's educator licensure. If the hearing officer recommends denial of an individual's license(s), the secretary is at liberty to order any action provided in Subsection A of 6.68.2.17 NMAC above, provided that any deviation from the hearing officer's proposed findings/conclusions is supported by a preponderance of the evidence after conducting an independent review of the transcript of the hearing. The same transcript review process would apply to any other proposed findings/conclusions of the hearing officer from which the secretary seeks to deviate.

C. At the request of the parties, the secretary may adopt and incorporate into the decision and order all or any part of a written settlement proposed by the parties, whether or not a case has gone to a hearing. Any such

settlement proposal shall be duly signed and notarized and contain the detailed agreements of the respective parties. Upon adoption and incorporation by the secretary of all or any part of a written settlement, that settlement or the incorporated portions shall become merged into the secretary's decision and order as a final agency decision.

D. Time: The written decision of the secretary must be rendered and signed within sixty (60) days after the completion of the preparation of the record or submission of the hearing officer's report, whichever is later. In any case, the decision must be rendered and signed within ninety (90) days after the hearing.

E. Service: A written copy of the decision of the secretary shall be served on the applicant personally in accordance with the rules of civil procedure for the district courts or by certified mail, return-receipt-requested, directed to the applicant at their last known address, or to their attorney, as shown by the records of the PED, within fifteen (15) days after the decision is rendered and signed.

F. The decision of the secretary is a public record and may be reported to the national association of state directors of teacher education and certification's clearinghouse and other organizations that request it. [6.68.2.17 NMAC - Rp, 6 NMAC 4.2.4.4.15, 11-30-05; A, 01-29-10]

6.68.2.18 WAIVER:

A. Time limits: The time limits specified in this rule may be waived by the applicant if done in writing.

B. Hearing: No hearing need be held by the PED if the applicant waives in writing their right to the hearing.

C. Voluntary denial: Prior to service of notice on an individual applying for initial or continuing licensure, that individual may voluntarily agree to a denial of their application, provided that any such voluntary denial is accomplished by writing where the individual has an opportunity to consult with and retain an attorney. A voluntary denial is not a voluntary withdrawal of an application but is an actual denial of a licensure application. A voluntary denial may be achieved only with the approval of the secretary, so long as the individual knowingly submits to the jurisdiction of the PED and waives in writing their right to a hearing and the other procedures set forth in this rule. A voluntary denial is not subject to judicial review and its effect is binding on the parties to the agreement accomplishing the denial.

[6.68.2.18 NMAC - Rp, 6 NMAC 4.2.4.4.16, 11-30-05; A, 01-29-10]

6.68.2.19 APPEAL:

A. A final decision by the secretary after the hearing officer has made the required recommendations may be appealed to the district court by an applicant within thirty (30) days of the date of filing of the decision in accordance with Section 39-3-1.1, NMSA 1978. ("Appeal of final decisions by agencies to district court--application--scope of review--review of district court decisions")

B. The applicant may apply to the secretary for a stay of the decision pending the outcome of the review of the decision in district court.

[6.68.2.19 NMAC - Rp, 6 NMAC 4.2.4.4.18, 11-30-05; A, 01-29-10]

6.68.2.20 SEVERABILITY: Any part of this rule found by adjudication before a competent tribunal to be contrary to law shall be stricken without effect to the remainder.

[6.68.2.20 NMAC - Rp, 6 NMAC 4.2.4.4.17, 11-30-05]

HISTORY OF 6.68.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

SBE Regulation No. 84-1, Governing Denial of Applications for Certification for School Personnel in New Mexico, filed January 24, 1984;

SBE Regulation 87-1, Governing Denial of Applications for Licenses For School Personnel in New Mexico, filed August 17, 1989.

History of Repealed Material:

6 NMAC 4.2.4.4, Denial of Applications for Licenses for School Personnel, filed 06/01/98 - Repealed effective 11-30-05.