

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 68 SCHOOL PERSONNEL - DENIAL, SUSPENSION, AND REVOCATION OF LICENSE
PART 3 SUSPENSION, REVOCATION OR OTHER DISCIPLINARY ACTION REGARDING A
LICENSE HELD BY A LICENSED SCHOOL INDIVIDUAL

6.68.3.1 ISSUING AGENCY: Public Education Department
[6.68.3.1 NMAC - Rp, 6 NMAC 4.2.4.5.1, 11-30-05]

6.68.3.2 SCOPE: This rule governs suspension, revocation or other disciplinary action regarding a license held by a licensed school instructor, administrator or any other of the individuals enumerated in Section 22-10A-3A NMSA 1978.
[6.68.3.2 NMAC - Rp, 6 NMAC 4.2.4.5.2, 11-30-05]

6.68.3.3 STATUTORY AUTHORITY: Sections 22-2-1; 22-2-2; 22-10A-5, 31; and 61-1-1 et seq.
NMSA 1978.
[6.68.3.3 NMAC - Rp, 6 NMAC 4.2.4.5.3, 11-30-05]

6.68.3.4 DURATION: Permanent
[6.68.3.4 NMAC - Rp, 6 NMAC 4.2.4.5.4, 11-30-05]

6.68.3.5 EFFECTIVE DATE: November 30, 2005, unless a later date is specified at the end of a section.
[6.68.3.5 NMAC - Rp, 6 NMAC 4.2.4.5.5, 11-30-05]

6.68.3.6 OBJECTIVE: This regulation is adopted by the public education department (hereinafter the "department") for the purpose of establishing hearing procedures for suspension, revocation or other disciplinary actions regarding a license or certificate issued by the department to a school instructor, administrator or any other of the individuals enumerated in Section 22-10A-3A, NMSA 1978.
[6.68.3.6 NMAC - Rp, 6 NMAC 4.2.4.5.6, 11-30-05]

6.68.3.7 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 Section 22-10A-10 and Section 22-10A-11 NMSA 1978.

B. "Ex parte communications" means any oral, written or electronic communications between one party (or his/her attorney) and the hearing officer, or as between one party (or his/her attorney) and the secretary of education (hereinafter, the "secretary") that occur out of the presence and/or without the consent of the opposing party (or his/her 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 secretary on any matter and for any reason related to a pending licensure case where charges have been served on a licensed individual pursuant to this regulation. 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 and/or without the consent of the opposing party (or his/her attorney) on any matter and for any reason related to a pending licensure case where charges have been served on a licensed individual pursuant to this rule.

C. "Licensee" means any of the individuals enumerated in Section 22-10A-3A, NMSA 1978, who are required to hold a valid license or certificate issued by the department in order to carry out their duties in a public school in New Mexico, and to whom the department did issue a certificate. A certificate and license issued by the department are one and the same.

D. "Other disciplinary action" means any action other than a suspension or revocation that the department may take against a licensee's license to practice the conduct authorized by that license as enumerated in Subsections G through N of Section 61-1-3, NMSA 1978.

E. "Revocation of a license" means the indefinite prohibition of the conduct authorized by the license.

F. "Suspension of a license" means the prohibition, for a stated period of time, of the conduct authorized by the license, which may or may not be subject to conditions that are reasonably related to the grounds

for suspension. Suspension also means the allowance, for a stated period of time, of the conduct authorized by the license subject to conditions that are reasonably related to the grounds for suspension.

G. "Transcript of the hearing" means a verbatim copy of the statements made by anyone during a hearing held under 6.68.3.11 NMAC and the Uniform Licensing Act, Section 61-1-1 et seq. NMSA 1978. A transcript may be either stenographically recorded or tape recorded.
[6.68.3.7 NMAC - Rp, 6 NMAC 4.2.4.5.7, 11-30-05]

6.68.3.8 COMMENCEMENT OF PROCEEDINGS:

A. Director's inquiry: The director of the educator ethics bureau or the director of the professional licensure bureau (hereinafter the "ethics bureau" or the "licensure bureau") shall initiate appropriate inquiries whenever it appears that ground(s) may exist as specified in Subsection B of 6.68.3.8 NMAC for suspension, revocation or other disciplinary action against a license or certificate held by a licensed school instructor, administrator or any other of the individuals enumerated in Section 22-10A-3A, NMSA 1978. If an inquiry leads either director to conclude that such ground(s) exist(s), said director shall recommend to the assistant secretary for educator quality that grounds exist for disciplinary action and that a notice should be served on the licensee in accordance with Subsection D of 6.68.3.8 NMAC.

B. Grounds for suspension, revocation or other disciplinary action against a license: subject to the procedures set forth below, the department may suspend, revoke or take other disciplinary action against a license or certificate held by a licensed school instructor, administrator or any other of the individuals enumerated in Section 22-10A-3A, NMSA 1978, for incompetency, immorality or 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 for licensure 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 department regulations prescribing the terms and conditions of employment contracts for licensed school personnel in New Mexico at a time when the licensee was subject to those regulations; or
- (4) a willful violation of any department regulation prescribing standards of conduct for licensed school personnel at a time when the licensee was subject to such requirement; or
- (5) a conviction of any felony or a misdemeanor involving moral turpitude, subject to the further 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, et seq., NMSA 1978; or
- (7) the intentional alteration of any college transcripts or any license issued by the department in connection with any private or public employment or in any dealings with the department;
- (8) knowingly permitting the continued employment of an individual without a valid license or waiver from the department for a public school position requiring a license by the School Personnel Act, Section 22-10A-3, NMSA 1978; or
- (9) failing to meet level III-A competencies where a local superintendent recommends to the secretary that the teacher's level III-A license be suspended in accordance with 6.69.4 NMAC.

C. Reporting requirements

(1) Every local 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 the ethics bureau upon acquiring knowledge of purported facts reasonably believed by such notifying person to constitute grounds for suspension, revocation or other disciplinary action against an educator or administrator license. At a minimum, the written notification shall include the name and address of the licensed individual, the personnel action taken by a school district, if any, and a statement of reason 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 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 revocation, suspension or other disciplinary action. Failure of a superintendent to provide such written notification under this subsection or Paragraph (2) of Subsection C of

6.68.3.8 NMAC below shall not bar the department from serving notice on a licensee, or revoking, suspending or taking other disciplinary action against his or her license.

(2) A school district superintendent or the person designated by the governing authorities of state agencies, private schools or charter schools shall report to the department any conviction of any felony or a misdemeanor involving moral turpitude of a licensed school employee that results in any type of action against the school employee in accordance with Section 22-10A-5D, NMSA 1978.

D. Notice of contemplated action

(1) Service of notice: Upon approval by the assistant secretary for educator quality the director of the ethics bureau or the licensure bureau shall prepare and serve a written notice of contemplated action on the licensed school instructor, administrator or any other of the individuals enumerated in Section 22-10A-3A, NMSA 1978, no later than two 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 licensee is a party arising from substantially the same facts, conduct or transaction that would be the basis for the department's action. All notices or decisions required by this rule may be served either personally or by certified mail, return receipt requested, directed to the licensee at his/her last known address as shown by the department's records. 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.

(2) Contents: The notice shall contain:

(a) the grounds believed to be sufficient for the suspension, revocation or other disciplinary action against the licensee's license;

(b) instructions for requesting a hearing before the department in accordance with 6.68.3.9 NMAC below.

(c) a statement that the department's contemplated action will be taken and shall become final unless the licensee requests a hearing according to the procedure and within the time specified, and that such action is not subject to judicial review;

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

(3) Copies of notice: A copy of the notice shall be sent by the department to the local superintendent of the district employing or seeking to employ the licensee, if known, unless the licensee is the said superintendent, in which case the president of the local school board shall be sent a copy of the notice [6.68.3.8 NMAC - Rp, 6 NMAC 4.2.4.5.8, 11-30-05]

6.68.3.9 PREHEARING PROCEDURES:

A. Filing of request for hearing: A licensee shall initiate a request for hearing by filing a timely, written request for hearing with the department, by delivery of such request to the office of the secretary of the department 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 licensee.

B. If a hearing is requested, the department, within twenty (20) days of receipt of the request, shall notify the licensee of the time and place of the hearing, the name, address and telephone number of the person who shall conduct the hearing for the department and the statutes and regulations authorizing the department 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 licensee does not make a timely written request for a hearing, the department 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, excluding any attorney then employed by the office of general counsel of the department. Upon receipt of the request for a hearing, the director of the ethics bureau or the licensure bureau 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 Section 21-300(B) 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 licensee to have his/her 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 6.68.3.9 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 licensee;

(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 his/her specialized knowledge so long as the licensee 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 licensee upon motion of the department.

E. Discovery:

(1) Rules of discovery provided in Rules 26 through 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 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 his/her 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 his/her 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 suspension, revocation or other disciplinary action case where a notice of contemplated action has been served on an licensee pursuant to this regulation.

[6.68.3.9 NMAC - Rp, 6 NMAC 4.2.4.5.9, 11-30-05]

6.68.3.10 RIGHTS OF A LICENSEE:

A. A licensee 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 department; 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. A licensee shall have the right to excuse the hearing officer in accordance with ULA Section 61-1-7, NMSA 1978.

[6.68.3.10 NMAC - N, 11-30-05]

6.68.3.11 HEARING:

A. Purpose: The purpose of the hearing shall be to determine whether sufficient grounds exist for the suspension, revocation or other disciplinary action against the license or certificate held by a licensed school instructor, administrator or any other of the individuals enumerated in Section 22-10A-3A, NMSA 1978. The burden of proof shall be upon the department to establish by a preponderance of the evidence that sufficient grounds exist.

B. Venue of hearing: The hearing shall be conducted in the county in which the licensee resides, or at the election of the department, in any county in which the act or acts complained of occurred. In any case, however, the licensee and the department 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 department shall present evidence in an attempt to establish that sufficient grounds exist for the suspension, revocation or other disciplinary action against the licensee's license. Thereafter, the licensee may present evidence in defense. The hearing officer may allow rebuttal evidence and/or 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 regulation, 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 his or her 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 department, by tape recording. The department shall observe any standards pertaining to tape recordings established for the district courts. In any event, the department shall have one 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 twenty (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 a licensee 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 him/her in the manner required under this regulation. Where a licensee 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 department where he failed to request a hearing, to reopen the proceeding, and upon finding such cause sufficient, the hearing officer or the department, as the case may be, shall schedule a hearing and give the licensee notice of such as required by this regulation. The hearing officer may require evidence to prove licensee's good cause in such cases.

E. Continuing jurisdiction

(1) Despite the expiration of a licensee's licensure, the department shall continue to have jurisdiction to hear a case under this regulation 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 a licensee shall act to stay the expiration of licensure where that individual's licensure was scheduled to expire and would expire during a proceeding under this regulation but for the stay of the expiration.

(3) Where the secretary issues a final order in which the licensee's licensure is neither revoked nor outright suspended, then the individual shall be permitted to renew his/her licensure as though it expired on the original expiration date as long as he/she satisfies all other licensure requirements for the level and type of license sought. The licensure bureau shall allow the individual 60 days from the secretary's final decision to file a renewal application.

[6.68.3.11 NMAC - Rp, 6 NMAC 4.2.4.5.10, 11-30-05]

6.68.3.12 THE HEARING OFFICER'S REPORT TO THE SECRETARY:

A. The parties' proposals: The hearing officer shall afford the licensee and the department an opportunity to file proposed findings of fact and conclusions of law by a deadline specified by the hearing officer not to exceed thirty days from the closing of the hearing. The hearing officer may include in or exclude from his or her 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/or make other findings and conclusions as he or she 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 his/her 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 disciplinary action of an individual's license(s) brought under authority of the Parental Responsibility Act where the hearing officer recommends disciplinary action against the licensee's license, the hearing officer shall limit his or her proposed findings, conclusions or order to the issues of whether a certified list of obligors from the human services department has been submitted indicating that individual as being in non-compliance of a district court child support order, and whether the human services department has provided to the department a certified statement that the licensee 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 department relative to a licensee'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 department's hearing officer and the secretary not subject to public inspection until the secretary has reviewed the report and rendered a final decision.

[6.68.3.12 NMAC - N, 11-30-05]

6.68.3.13 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 licensee of his/her 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; or
- (2) modify said findings of fact and conclusions of law and order and render a decision; or

(3) reopen the case to receive additional evidence or for other cause on request from the licensee or on the secretary's own motion; and where a request to reopen the case comes from the licensee, the secretary shall serve upon the licensee within fifteen 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 licensee within fifteen days after service of

the decision to reopen with the hearing being held within forty-five days after the service of said notice and the decision from the hearing being served on the licensee within thirty days after the hearing; or

(4) reject any action against the licensee's licensure on the grounds alleged and order the said license(s) to remain in full force and effect. 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 a licensee's educator licensure. If the hearing officer recommends suspension of an individual's license(s), the secretary is at liberty to order any action provided in Section 6.68.3.13A 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 his or her 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 licensee personally in accordance with the rules of civil procedure for the district courts or by certified mail, return-receipt-requested, directed to the licensee at his or her last known address, or to his or her attorney, as shown by the records of the department, 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. [6.68.3.13 NMAC - Rp, 6 NMAC 4.2.4.5.11, 11-30-05]

6.68.3.14 WAIVER:

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

B. Hearing: No hearing need be held by the department if the licensee waives in writing his or her right to the hearing.

C. Voluntary surrender: Prior to service of notice on a licensed individual, that individual may voluntarily surrender his/her license(s) in a manner tantamount to revocation or suspension of his/her license, provided that any such voluntary surrender is accomplished by a writing where the individual has an opportunity to consult with and retain an attorney. A voluntary surrender may be achieved only with the approval of the secretary, so long as the licensed individual knowingly submits to the jurisdiction of the department and waives in writing his or her right to a hearing and the other procedures set forth in this rule. A voluntary surrender is not subject to judicial review and its effect is binding on the parties to the agreement accomplishing the surrender. [6.68.3.14 NMAC - Rp, 6 NMAC 4.2.4.5.12, 11-30-05]

6.68.3.15 APPEAL:

A. A final decision by the secretary after the hearing officer has made his or her recommendations may be appealed to the district court by an applicant within thirty 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 his or her decision pending the outcome of the review of the decision in district court. [6.68.3.15 NMAC - Rp, 6 NMAC 4.2.4.5.13, 11-30-05]

6.68.3.16 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.

[6.68.3.16 NMAC - Rp, 6 NMAC 4.2.4.5.14, 11-30-05]

History of 6.68.3 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 78-6 amendment number 1, Governing Suspension or Revocation of a License Held by a Licensed School Instructor or Administrator, filed June 29, 1988.

History of Repealed Material:

6.NMAC 4.2.4.5, Suspension or Revocation of A License Held By A Licensed School Individual, Filed 06-01-98 - Repealed effective 11-30-05