

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 20 TRAFFIC SAFETY
PART 3 DRIVER EDUCATION SCHOOLS

18.20.3.1 ISSUING AGENCY: New Mexico State Highway and Transportation Department.
[18.20.3.1 NMAC - Rp, 18 NMAC 20.3.1, 1-1-03]

18.20.3.2 SCOPE: This rule applies to all persons seeking to operate driver education schools, or serve as instructors for driver education courses offered, in New Mexico.
[18.20.3.2 NMAC - Rp, 18 NMAC 20.3.2, 1-1-03]

18.20.3.3 STATUTORY AUTHORITY: NMSA 1978, Sections 66-10-1 through 66-10-12.
[18.20.3.3 NMAC - Rp, 18 NMAC 20.3.3, 1-1-03]

18.20.3.4 DURATION: Permanent.
[18.20.3.4 NMAC - Rp, 18 NMAC 20.3.4, 1-1-03]

18.20.3.5 EFFECTIVE DATE: January 1, 2003, unless a later date is cited at the end of a section.
[18.20.3.5 NMAC - Rp, 18 NMAC 20.3.5, 1-1-03]

18.20.3.6 OBJECTIVE: The purpose of this rule is to provide minimum and uniform standards for the issuance, renewal, and revocation of driver education school licenses and driver education instructor certificates and to establish requirements for the operation of driver education schools.
[18.20.3.6 NMAC - Rp, 18 NMAC 20.3.6, 1-1-03]

18.20.3.7 DEFINITIONS:

- A. ADA** means the Americans with Disabilities Act, 42 U.S.C.S Section 12101 et seq.
- B. Bureau** means the Traffic Safety Bureau (TSB) of the New Mexico State Highway and Transportation Department.
- C. certificate** means a document issued by the Bureau authorizing a person to serve as a driver education school instructor.
- D. clean driving record** means a person has no more than six (6) points on his/her driver's license, and has not within the last ten (10) years had his/her driver's license suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or been convicted in any jurisdiction of an alcohol or drug-related driving offense.
- E. convicted or conviction** has the meaning given in NMSA 1978, Section 66-8-102.
- F. correspondence course** means a driver education course approved by the Bureau in which a student independently studies written materials and submits written assignments for review by a driver education instructor.
- G. course or credit hour** means fifty (50) minutes of instruction and ten (10) minutes of break time.
- H. designee** means a person authorized to perform certain specified duties on behalf of the Bureau.
- I. diploma** means a document evidencing that a person has completed a Driver Education Instructor Training Course or Refresher Driver Education Instructor Training Course conducted by the Bureau.
- J. driver education course or course** means a course of instruction approved by the Bureau pursuant to NMSA 1978, Section 66-10-11 and includes correspondence courses.
- K. driver education school or school or licensee** means a person licensed by the Bureau to offer driver education courses.
- L. driver education instructor or instructor** means a person certified by the Bureau as qualified and trained to conduct driver education courses.
- M. driving simulator** means a computer-based simulator unit and program that reproduces driving situations likely to occur in actual driving performance on the street which require the student to evaluate risk, make decisions, and respond appropriately to the driving situation presented.
- N. enrolled** means that a student has attended the first day of a scheduled course and will continue until the course is completed.

O. extension site means a location other than the main school site where a licensed driver education school offers driver education courses.

P. for-profit driver education school means a person who is not exempt from the Driving School Licensing Act pursuant to NMSA 1978 Section 66-10-8.

Q. Implied Consent Act means NMSA 1978 Sections 66-8-105 through 66-8-112.

R. limited history driving record means a driving record from the Motor Vehicle Division of the Taxation and Revenue Department that includes driver's license revocations pursuant to the Implied Consent Act.

S. license means the document issued by the Bureau authorizing a person to operate a driver education school.

T. moral turpitude means behavior that gravely violates the accepted moral standards of the community.

U. on-range training means a student is in control of a motor vehicle on an off-street facility where one or more students may be operating a motor vehicle simultaneously under the direction of one or more instructors who are outside the vehicle.

V. on-street training means a student is in control of a motor vehicle on a public highway in real and varied traffic situations and an instructor is in the front passenger seat next to the student.

W. person means an individual, firm, partnership, association, corporation, or other legal entity.

X. proctored exam means an exam monitored by a driver education instructor.

Y. revocation or revoked means the involuntary permanent termination of a license or certificate by the Bureau for cause.

Z. student means a person who has enrolled in a driver education course.

AA. suspended or suspension means the involuntary termination of a license or certificate by the Bureau for cause for a specified period of time.

[18.20.3.7 NMAC - Rp, 18 NMAC 20.3.7, 1-1-03]

18.20.3.8 STUDENT ELIGIBILITY:

A. A driver education school shall not enroll a person as a student unless the person will be fifteen (15) years of age on or before the date the classroom portion of the driver education course will be completed.

B. A correspondence course shall not enroll a person as a student unless the person will be fifteen (15) years of age on or before the date the correspondence course will be completed and:

(1) the person is home schooled in all other junior high school or high school subjects. The school must obtain a letter from the person's parents or legal guardian stating that the person is home schooled in all subjects; or

(2) the person has obtained prior written approval from the Bureau.
[18.20.3.8 NMAC - N, 1-1-03]

18.20.3.9 APPLICATION FOR FOR-PROFIT DRIVER EDUCATION SCHOOL LICENSE:

A. License required. No person may operate a driver education school without first having obtained a license from the Bureau.

B. Application form. A person wishing to obtain a license to operate a for-profit driver education school must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

C. Contents of application. An application for a for-profit driver education school license shall contain:

(1) the applicant's name, mailing address, telephone number, and, if the applicant has one, the applicant's e-mail address;

(2) a photocopy of the Certificate of Maximum Occupant Load issued by the state or local Fire Marshal stating the maximum occupancy allowed by the fire code for each room at the main school site and each extension site, if applicable, that will be used as a classroom;

(3) a list of all extension sites to be used for conducting driver education courses;

(4) a list of all instructors who will conduct driver education courses;

(5) a schedule of fees applicable to students who enroll in a driver education course;

(6) the proposed curriculum, handouts, videos, and final examination questions for the driver education course;

(7) the name, address, and telephone number of three (3) character and employment references who

are not family members; and

- (8) the applicant's resume or curriculum vitae.

D. Completeness. When the Bureau receives an application for a driver education school license, the Bureau shall check the application for completeness.

(1) If the application is not complete, the Bureau shall contact the applicant for additional information.

- (2) If the application is complete, the Bureau shall review the application.

[18.20.3.9 NMAC - Rp, 18 NMAC 20.3.8, 1-1-03]

18.20.3.10 ISSUANCE OF INITIAL FOR-PROFIT DRIVER EDUCATION SCHOOL LICENSE:

A. Review by the Bureau. In reviewing applications for driver education schools, the Bureau shall consider whether:

- (1) the information provided by the applicant is accurate and valid;
- (2) the character and employment references provided by the applicant report that the applicant is fit to operate a driver education school;
- (3) the proposed driver education school can certify that its facilities meet the accessibility requirements of the ADA; and
- (4) the persons who will serve as driver education instructors meet the requirements of this rule.

B. Issuance of initial license. If the Bureau determines that an applicant meets the standards prescribed in subsection A, the Bureau shall issue a license upon:

- (1) payment of the \$400.00 license fee;
- (2) payment of the \$35.00 extension site fee for each extension site, if applicable;
- (3) submittal of a certificate of insurance that meets the requirements of subsection C of 18.20.3.13 NMAC for each vehicle used for driver training; and
- (4) posting of a surety bond with the Bureau in the amount of \$5,000 issued by a company authorized to transact surety business in New Mexico. The surety bond shall be continuous and shall assure the satisfactory performance of all contracts with students, including tuition refund agreements, and the maintenance of student records.

C. Denial of license. If the Bureau determines that an applicant does not meet the standards prescribed in subsection A of this section, the Bureau will issue a letter stating the reasons for denial of the license. A person may reapply for a license at any time.

[18.20.3.10 NMAC - Rp, 18 NMAC 20.3.9 and 20.3.16, 1-1-03]

18.20.3.11 TERM OF FOR-PROFIT DRIVER EDUCATION SCHOOL LICENSE:

A. Term. A license shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial licenses shall be valid from the date of issuance to the next June 30. Renewal licenses shall be valid from July 1 of the year of renewal to June 30 of the following year.

B. License renewal. A licensee must file an application for renewal of its license with the Bureau on or before June 1 of each year to ensure license renewal by July 1. A licensee who files an application for renewal after June 1 shall pay a late fee of \$25.00. The Bureau will review applications for renewal in the order in which they are received.

- (1) The Bureau will renew a license for a period of one (1) year if:
 - (a) the Bureau or its designee finds that the driver education school is in compliance with the requirements of this rule;
 - (b) the licensee has submitted all required reports to the Bureau;
 - (c) the licensee has submitted a certificate of insurance that meets the requirements of subsection C of 18.20.3.13 NMAC for each vehicle used for driver training; and
 - (d) the licensee pays the \$400.00 annual license fee and, if applicable, the \$35.00 extension site fee for each extension site and the \$25.00 late fee if the application was filed after June 1.

(2) The Bureau shall not renew the license of any driver education school not in compliance with the requirements of this rule.

C. Probation. The Bureau may place a licensee on probation if the Bureau finds that the driver education school is not in compliance with one or more of the requirements of this rule. The Bureau shall send a notice of probation to the licensee specifying the provisions of this rule with which the licensee is not in compliance. The Bureau shall determine the period of probation depending on the number and severity of the violations. The

Bureau will review the licensee's operations periodically during the probation period.

D. Early termination.

- (1) A license shall automatically terminate if a driver education school ceases operation.
- (2) The Bureau may suspend or revoke a license for cause as provided in this rule.

E. Restriction on sale of license. A driver education school license may not be sold or transferred.
[18.20.3.11 NMAC - Rp, 18 NMAC 20.3.10 and 20.3.16, 1-1-03]

18.20.3.12 CLASSROOM COURSE REQUIREMENTS FOR FOR-PROFIT DRIVER EDUCATION SCHOOLS: A licensee providing classroom instruction shall:

A. engage as driver education instructors only those persons who have been certified by the Bureau. A licensee may not serve as an instructor unless the licensee has been certified by the bureau as an instructor.

B. enroll no more than forty (40) students or the maximum occupancy allowed by the fire code, whichever is less, in a driver education course.

C. not charge a student more than \$400.00, including tax, for enrolling in a driver education course.

D. display the license issued by the Bureau in an appropriate and visible location.

E. display the placard issued by the Fire Marshal stating the maximum occupancy of each classroom in an appropriate and visible location in the classroom.

F. use classroom facilities that:

- (1) have adequate space, lighting, heating, and ventilation;
- (2) have seats and stable writing surfaces for each student in the class;
- (3) have a whiteboard, blackboard, or flipchart;
- (4) have a monitor of sufficient size for all students to see, if videos are used; and
- (5) comply with all federal, state, and local laws relating to persons with disabilities, public health, safety, and sanitation, including restroom facilities.

G. ensure that the learning environment is conducive to learning and free from discrimination, intimidation, and harassment. No person shall engage in, or be permitted to engage in, conduct that is offensive to the ordinary dignity, decency, and morality of others.

H. use only the curriculum, handouts, videos, and final examination questions approved by the Bureau.

I. accommodate the special needs of hearing impaired students. Whenever a driver education school becomes aware that an enrollee is hearing impaired, the school shall inform the hearing impaired student in writing that if a friend or family member of the enrollee cannot perform sign language interpretation for the student, the school will contact the Bureau to arrange for sign language interpretation. The driver education school shall contact the Bureau at least twenty (20) days before the scheduled date of the driver education course.

J. accommodate the special needs of non-English speaking students. Whenever a driver education school becomes aware that an enrollee does not speak English, the school will make reasonable efforts to provide interpreter services. The driver education school shall first inquire if a friend or family member of the enrollee can interpret for the student. If that is not possible, the driver education school will make reasonable efforts to find a driver education instructor or other person to interpret for the student during the driver education course.

K. provide at least thirty (30) course hours of classroom instruction for each driver education course if the school also provides behind-the-wheel training, or fifty-six (56) hours of classroom instruction for each driver education course if the school does not provide behind-the-wheel training. At least six (6) hours of classroom instruction shall be devoted to DWI prevention and education and shall include information on organ donation and the Uniform Anatomical Gifts Act, NMSA 1978 Sections 24-6A-1 et seq.

(1) When school is in session, a licensee shall conduct the course over a minimum four week period, with no more than three (3) hours of classroom instruction on days when classes are held, and no more than four (4) hours of classroom instruction on days when classes are not held.

(2) During summer vacation, Christmas vacation, and spring break, a licensee may conduct the course over a minimum two (2) week period, with no more than four (4) hours per day of classroom instruction.

L. have a proctored final exam with a minimum of fifty (50) questions. A student must correctly answer at least seventy percent (70%) of the questions to pass the final exam. The exam shall require students to list, define, describe, identify, demonstrate, explain, compare, predict, estimate, or solve driving-related terms, signs, and situations.

M. use completion certificates purchased from the Bureau at a cost of \$1.00 per certificate.

N. not permit a student to attend any driver education classes until the student has received written

information stating all fees, including incidental costs, charged for the course, school policies for passing and failing, refund and reschedule policies and attendance requirements.

[18.20.3.12 NMAC - Rp, 18 NMAC 20.3.11 and 20.3.16, 1-1-03]

18.20.3.13 BEHIND-THE-WHEEL TRAINING:

A. Hours requirement.

(1) A for-profit driver education school shall provide at least seven (7) hours of behind-the-wheel training to each student. At least four (4) of the seven (7) hours shall be on-street training.

(2) A for-profit driver education school may meet up to three (3) hours of the behind-the-wheel training requirement:

(a) with on-range training; or

(b) with prior written approval from the Bureau, by using a driving simulator approved by the Bureau, provided that two (2) hours of instruction using a driving simulator shall be equivalent to one (1) hour of on-street training.

(3) On days when classes are held, a licensee shall provide no more than one (1) hour per day of behind-the-wheel training per student. On days when classes are not held, a licensee shall provide no more than two (2) hours per day of behind-the-wheel training per student.

(4) Driving time shall not include time spent driving to pick up or drop off students unless the route meets the objective of the drive lesson.

B. Pre-driving classroom instruction. Before a licensee schedules students for on-street training, the licensee shall provide classroom instruction on:

- (1) approaching the vehicle with awareness;
- (2) orientation to controls;
- (3) basic rules of the road;
- (4) use of vision to control the vehicle;
- (5) proper use of the steering wheel, accelerator, and brake;
- (6) turning left and right; and
- (7) signs, signals, and road markings.

C. Vehicle insurance required. A licensee shall provide to the Bureau a certificate showing the issuance of an insurance policy with the required uniform endorsement by a company authorized to transact insurance business in New Mexico on Uniform Filing Form E evidencing public liability insurance on all vehicles used for behind-the-wheel driving instruction. The certificate shall list the make, model, and year of each vehicle and shall have the following minimum limits of coverage:

- (1) \$500,000 per occurrence for bodily injury to or death of all persons injured or killed;
- (2) \$250,000 per person for bodily injury to or death of a person injured or killed;
- (3) \$10,000 per person for medical payments;
- (4) \$100,000 per occurrence for property damage; and
- (5) \$50,000 per person for uninsured motorist coverage.

D. Other requirements.

(1) The number of students in a motor vehicle being used for behind-the-wheel instruction shall not exceed the number of operational seatbelts in the vehicle. Only the instructor and driver education student may occupy the front seat. Only a student, parent or guardian of a student, instructor, translator, licensee, or person training to become a driver education instructor may occupy a rear seat.

(2) A for-profit driver education school shall maintain a driving log for each student. The driving log shall include the student's name, permit number, home telephone number, the name and telephone number of an emergency contact person, the instructor's name, the date and start and end time of each drive, the skills taught that day, the instructor remarks, the student's initials for each drive, the student's final behind-the-wheel grade, total driving time for the student.

(3) No instructor or student shall use a cell phone while a student is driving except in an emergency.

E. Disabled and special education students.

(1) When providing behind-the-wheel driving instruction to disabled students, a for-profit driver education school shall use:

(a) only those instructors certified by the Bureau who also hold the Certified Driver Rehabilitation Specialist credential from the Association of Driver Educators for the Disabled, or an equivalent credential from an organization recognized by the Bureau; and

(b) whatever special equipment is required to train the disabled student.

(2) When providing behind-the-wheel driving instruction to disabled and special education students, a for-profit driver education school shall provide individualized instruction for each student based on the nature and severity of the student's disability or special needs.

F. Car and equipment specifications. A for-profit driver education school shall maintain all motor vehicles it uses for behind-the-wheel training in safe operating condition and shall equip them with the following:

- (1) a passenger side brake;
- (2) right and left side mirrors;
- (3) an inside rear view mirror for the instructor;
- (4) operational seatbelts for all occupants;
- (5) adjustable front seats;
- (6) a first aid kit;
- (7) safe tires; and
- (8) signs on both sides and on the rear of the vehicle indicating the name of the driver education

school, "student driver" or "driver education vehicle." The background and letters of the sign shall be in contrasting colors, the letters shall be at least three inches (3") high, and the sign shall be safely secured to the vehicle.

G. Reports of moving violations and crashes. A for-profit driver education school shall report to the Bureau:

(1) within twenty-four (24) hours, all crashes that result in injury or death that involve students driving driver education school vehicles; and

(2) within ten (10) working days of their occurrence, all other crashes and all moving violations that involve students driving driver education school vehicles.

[18.20.3.13 NMAC - Rp, 18 NMAC 20.3.11, 1-1-03]

18.20.3.14 CORRESPONDENCE COURSE REQUIREMENTS. A licensee offering correspondence courses shall:

A. enroll only those New Mexico students who are eligible pursuant to subsection B of 18.20.3.8 NMAC.

B. use only the curriculum, handouts, videos, and final exam questions approved by the Bureau.

C. provide fifty-six (56) or more hours of coursework, based on an average person completion time.

D. have a final exam with a minimum of fifty (50) questions. A student must correctly answer at least seventy percent (70%) of the questions to pass the final exam.

E. use completion certificates purchased from the Bureau at a cost of \$1.00 per certificate.

F. specify at least one (1) certified instructor to act as liaison with the Bureau.

[18.20.3.14 NMAC - N, 1-1-03]

18.20.3.15 OPERATING REQUIREMENTS FOR FOR-PROFIT DRIVER EDUCATION SCHOOLS:

A licensee:

A. shall adhere strictly to the requirements of this rule;

B. shall notify the Bureau at least thirty (30) days in advance if the driver education school intends to cease operations;

C. shall make all driver education school records available for inspection by the Bureau or its designee at any time; A licensee shall maintain its records in ink for a minimum of three (3) years for each student receiving instruction, including students who passed, failed, withdrew, cancelled, or transferred to another school. The records shall be updated for each lesson.

D. shall, on a quarterly basis, provide the Bureau with a copy of the class roster for each driver education course conducted which shall contain, at a minimum, the name of the instructor, and each student's name, date of birth, date of course completion, final exam test score, and completion certificate number.

E. shall have a written refund policy and a written reschedule policy which must be issued to each student upon enrollment.

F. shall notify the Bureau of:

- (1) any changes in address ten (10) days before opening for business at the new location;
- (2) the addition or closing of extension sites within ten (10) days of their opening or closing; and
- (3) the addition or deletion of instructors within ten (10) days of their hiring or leaving.

G. shall conduct all school operations in a professional and courteous manner.

H. shall operate all extension sites under the name used for the main school site and be accountable for all extension site operations.

I. shall not publish, advertise, or insinuate in any way that a student is assured of obtaining a driver's license if they take the course offered by the licensee.

J. may use the phrases "licensed by the Traffic Safety Bureau" or "curriculum approved by the Traffic Safety Bureau" but may not otherwise use the word "approved" or any of its synonyms in its advertising or promotional materials.

[18.20.3.15 NMAC - Rp, 18 NMAC 20.3.11, 1-1-03]

18.20.3.16 EVALUATION OF FOR-PROFIT DRIVER EDUCATION SCHOOLS:

A. Responsibility. The Bureau or its designee shall conduct periodic evaluations of driver education schools using criteria developed by the Bureau. The Bureau shall prepare a written evaluation and shall provide a copy of the evaluation to the licensee upon request. The Bureau may in its discretion conduct evaluations of a driver education school on its own initiative at any time and for any reason or in response to complaints from any person. The Bureau shall document, investigate, and discuss all complaints with the driver education school.

B. Relevant factors. In conducting its evaluations, the Bureau shall consider:

- (1) the number and nature of any comments or complaints received from students, instructors, judges, law enforcement officers, and others;
- (2) whether the driver education school consistently meets the requirements of this rule; and
- (3) on-site quality assurance visits by the Bureau or its designee. On-site visits may address the adequacy of classroom facilities, instructors' traffic safety knowledge and teaching techniques, learning environment, quality of the curriculum, class materials, and examination questions, and customer service.

[18.20.3.16 NMAC - Rp, 18 NMAC 20.3.12, 1-1-03]

18.20.3.17 CERTIFICATION OF JUNIOR HIGH SCHOOL AND HIGH SCHOOL DRIVER EDUCATION INSTRUCTORS:

A. Diploma required. No teacher may serve as a driver education instructor in a school without first having obtained a diploma from the Bureau. The Bureau may in its discretion temporarily waive this requirement upon request of the school principal or superintendent, contingent on the teacher attending a Driver Education Instructor Training Course offered by the Bureau within twelve (12) months. A teacher certified pursuant to this section shall not be certified to teach driver education in a for-profit driver education school unless he or she obtains instructor certification pursuant to 18.20.3.18 NMAC.

B. Application requirements. A junior high school or high school teacher wishing to obtain approval from the Bureau to teach driver education at school shall send a letter on school letterhead, signed by the school principal or superintendent, containing the following information:

- (1) the name of the teacher;
- (2) a copy of the teacher's State Board of Education teaching license or waiver to teach pending licensure;
- (3) a copy of the teacher's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the letter is filed with the Bureau;
- (4) the date the teacher will attend the Bureau's Driver Education Instructor Training Course.

C. Standards for certification. Prior to approving the teacher to attend training, the Bureau shall consider whether the teacher:

- (1) is at least twenty-one (21) years of age;
- (2) holds a valid driver's license; and
- (3) has a clean driving record.

D. Approval for training. If the Bureau determines that the teacher meets the standards in subsection C of this section, the Bureau shall grant approval for the teacher to attend the forty (40) hour classroom portion of the Bureau's Driver Education Instructor Training Course.

E. Term of certification. A diploma from the classroom portion of the Bureau's Driver Education Instructor Training Course shall certify the teacher to teach in a school for five (5) years from the date of completion of training.

F. Renewal of certification. A teacher may renew his/her certification to teach driver education in a school by taking the Refresher Driver Education Instructor Training Course before his/her diploma expires. A diploma from the Bureau's Refresher Driver Education Instructor Training Course shall certify the teacher to teach in

a school for five (5) years from the date of completion of refresher training. If the teacher does not complete the Refresher Driver Education Instructor Training Course within the five-year period, the teacher's certification will lapse.

[18.20.3.17 NMAC - N, 1-1-03]

18.20.3.18 CERTIFICATION OF FOR-PROFIT DRIVER EDUCATION INSTRUCTORS:

A. Certification required. No person or licensee may serve as a driver education instructor without first having obtained a certificate from the Bureau.

B. Application requirements. A person wishing to obtain a certificate as a driver education instructor must file an application with the Bureau. A person may obtain an application by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

C. Contents of application. The application must be accompanied by:

(1) a copy of the applicant's limited history driving record from the Motor Vehicle Division, Driver Services Bureau dated no earlier than sixty (60) days before the date the application is filed with the Bureau;

(2) a state police background check dated no earlier than sixty (60) days before the date the application is filed with the Bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety at least sixty (60) days before the date the application is filed with the Bureau;

(3) a copy of the applicant's health certificate signed by a physician and dated no earlier than sixty (60) days before the date the application is filed with the Bureau stating that the applicant is free from all communicable diseases. If the applicant will provide behind-the-wheel training, the health certificate must also state that the applicant is free of any ailment, disease, or physical defect that causes momentary or prolonged lapses of consciousness or control, which is or may become chronic, and that the applicant is not must suffering from a physical or mental disability or disease that prevents reasonable and ordinary control over a motor vehicle or that could impair the applicant's ability to drive safely or instruct student drivers. Correspondence school instructor applicants do not need to submit a health certificate.

(4) a copy of a teaching certificate from the State Board of Education, a copy of a diploma or official transcript evidencing a bachelor's degree from an accredited college or university, or a resume with verifiable employment history showing a minimum of three years of experience in driver training or a related field;

(5) the name, address, and telephone number of three (3) character and employment references who are not family members; and

(6) the applicant's resume or curriculum vitae.

D. Completeness check. When the Bureau receives an application for certification as a driver education instructor, the Bureau shall check the application for completeness.

(1) If the application is incomplete, the Bureau shall contact the applicant for additional information.

(2) If the application is complete, the Bureau shall review the application.

E. Standards for issuance of driver education instructor certificate. In reviewing applications for driver education instructors, the Bureau shall consider whether:

(1) the information provided is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to be a driver education instructor;

(3) the applicant is at least twenty-one (21) years of age;

(4) the applicant has a bachelor's degree from an accredited college or university, has a license as a teacher from the State Board of Education, or has a minimum of three (3) years of experience in driver training or a related field;

(5) the applicant holds a valid driver's license;

(6) the applicant has not been convicted of a crime involving moral turpitude; and

(7) the applicant has a clean driving record. [07-01-98]

F. Approval for training.

(1) If the Bureau determines that the applicant meets the standards in subsection E of this section, the Bureau shall grant approval to proceed with instructor training.

(a) If the applicant will teach only the classroom portion of the driver education course, the applicant must complete the forty (40) hour classroom portion of the Bureau's Driver Education Instructor Training Course.

(b) If the applicant will teach the behind-the-wheel portion of the driver education course, the

applicant must complete both the forty (40) hour classroom portion and the 40-hour behind-the-wheel portion of the Bureau's Driver Education Instructor Training Course.

(c) If the applicant is not a licensed teacher, the applicant must complete a Bureau sponsored or approved Instructor Training Course designed to teach instructional strategies, classroom management, or acquisition of teaching competencies.

(d) The Bureau shall issue a diploma upon satisfactory completion of the classroom and/or behind-the-wheel portions of the course, which shall be valid for five (5) years from the date of completion.

(2) If the Bureau determines that the applicant does not meet the standards in subsection E of this section, the Bureau shall issue a letter stating the reasons it is not granting approval to proceed with instructor training.

G. Final review.

(1) If the Bureau determines that an applicant has successfully completed all applicable portions of the Driver Education Instructor Training Course and is otherwise fit, the Bureau will issue a certificate upon payment of the \$50.00 instructor certification fee. The Bureau may in its discretion issue a temporary certificate to an applicant, contingent on the applicant attending the next Driver Education Instructor Training Course offered by the Bureau.

(2) If the Bureau determines that an applicant has not successfully completed the Driver Education Instructor Training Course or is otherwise not fit, the Bureau shall issue a letter stating its reasons for denial of certification.

H. Term. A driver education instructor certificate shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial certificates shall be valid from the date of issuance to the next June 30. Renewal certificates shall be valid from July 1 of the year of renewal to June 30 of the following year. [18.20.3.18 NMAC - Rp, 18 NMAC 20.3.13, 20.3.14, 20.3.15 and 20.3.16, 1-1-03]

18.20.3.19 RECERTIFICATION OF FOR-PROFIT DRIVER EDUCATION INSTRUCTORS:

A. Certificate renewal.

(1) A driver education instructor must file an application for renewal of his or her certificate with the Bureau on or before June 1 each year to ensure certificate renewal by July 1. A driver education instructor who files an application for renewal after June 1 shall pay a late fee of \$25.00.

(2) A person may obtain an application for renewal by contacting the Bureau or accessing the Bureau's website at <http://www.nmshtd.state.nm.us>.

(3) The application for renewal shall be accompanied by the documents specified in subsection C of 18.20.3.18 NMAC.

(4) The Bureau will review applications for renewal in the order in which they are received.

B. Continuing education requirements.

(1) Driver education instructors must complete a minimum of sixteen (16) credit hours of continuing education each year to qualify for recertification.

(2) A driver education instructor can satisfy this requirement in whole or in part by attending Bureau sponsored:

- (a) traffic safety issues forums and workshops; and
- (b) education courses and workshops.

(3) The Bureau may, in its discretion, approve continuing education credit on the basis of one continuing education credit hour for every hour of attendance at the following types of programs if a copy of the workshop agenda or course curriculum is submitted to the Bureau:

- (a) drug or alcohol workshops; or
- (b) education courses or workshops.

(4) Every five (5) years after completing the Bureau's Driver Education Instructor Training Course, the driver education instructor must satisfactorily complete the Bureau's eight (8) hour Driver Education Refresher Course, which will renew the driver education instructor's diploma for another five (5) years and meet the driver education instructor's continuing education requirement for that year.

C. Approval/disapproval of application for certificate renewal.

(1) The Bureau will renew the certificate of a driver education instructor for a period of one year if the driver education instructor:

- (a) pays the \$50.00 annual certification fee;
- (b) meets the standards specified in subsection E of 18.20.3.18 NMAC;

(c) has received an overall rating of satisfactory or better in the periodic evaluations conducted by the Bureau or its designee in the preceding year; and

(d) has completed sixteen (16) hours of continuing education in the year preceding the application for renewal.

(2) The Bureau shall not renew the license of any driver education instructor who:

(a) fails to complete sixteen (16) hours of continuing education in the year preceding the application for renewal; or

(b) fails to meet the standards specified in subsection E of 18.20.3.18 NMAC.
[18.20.3.19 NMAC - Rp, 18 NMAC 20.3.15 and 20.3.16, 1-1-03]

18.20.3.20 SUSPENSION OR REVOCATION OF A LICENSE OR CERTIFICATE:

A. Grounds. The Bureau may suspend or revoke the license or certificate of a licensee or driver education instructor:

(1) who makes a false statement on an application;
(2) who fails to follow the approved curriculum;
(3) who poses an immediate danger to the physical or mental safety or health of a student;
(4) who is convicted of any alcohol or drug-related driving offense;
(5) who has refused to submit to or failed chemical tests pursuant to the Implied Consent Act;
(6) whose New Mexico driver's license is suspended or revoked;
(7) who fails to notify the Bureau in writing within ten days that his/her driver's license has been suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or that he/she been convicted in any jurisdiction of an alcohol or drug-related driving offense or an offense involving moral turpitude;

(8) whose conduct in the performance of official duties is unethical, including but not limited to, verbal abuse, intimidation, or sexual harassment of students;

(9) who fails to comply with any requirement of this rule or any lawful order of the Bureau;

(10) who becomes employed or remains employed by a driver education school whose license has been revoked pursuant to this rule;

(11) who employs or continues to employ a driver education instructor whose certificate has been revoked pursuant to this rule; or

(12) who fails to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 et seq. or any rule implementing that Act.

B. Procedure. The Bureau shall use the procedures prescribed in the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 et seq., in all suspension and revocations proceedings held pursuant to this rule.

C. Consequences of suspension or revocation.

(1) A driver education school shall not offer or conduct any driver education courses if its license is suspended or revoked.

(2) A driver education instructor shall not conduct any driver education courses if his or her certificate is suspended or revoked.

D. Notice of suspension or revocation.

(1) The Bureau shall immediately notify by certified mail, return receipt requested, each driver education instructor employed by a driver education school whose license has been suspended or revoked that the driver education school's license has been suspended or revoked and that the driver education instructor may not conduct any driver education courses for that driver education school unless and until the license is reinstated by the Bureau.

(2) The Bureau shall immediately notify by certified mail, return receipt requested, each driver education school that employs a driver education instructor whose certificate is suspended or revoked that the driver education instructor's certificate has been suspended or revoked and that the driver education school may not employ that driver education instructor unless and until the certificate is reinstated by the Bureau.

(3) The Bureau will notify all Motor Vehicle Division field offices that the driver education school's license or the driver education instructor's certificate has been revoked or suspended.

(4) The Bureau will notify all state, metropolitan, magistrate, and municipal courts that the driver education school's license has been revoked or suspended and that the driver education school is no longer an approved school.

[18.20.3.20 NMAC - Rp, 18 NMAC 20.3.17, 20.3.18, and 20.3.22, 1-1-03]

18.20.3.21 IMMEDIATE SUSPENSION OF A LICENSE OR CERTIFICATE:

A. Grounds. The Bureau may immediately suspend the license of a driver education school or the certificate of a driver education instructor if the Bureau finds that the licensee or driver education instructor poses an immediate danger to the physical or mental safety or health of a student.

B. Notice of immediate suspension. The Bureau shall commence proceedings to immediately suspend a license or certificate by issuing a written notice of immediate suspension to the licensee or driver education instructor, which shall contain at least the following information:

(1) the name and last known address of the licensee or driver education instructor whose license or certificate the bureau is immediately suspending.

(2) a statement that the Bureau is immediately suspending the driver education school's license or driver education instructor's certificate for a period of thirty (30) days and the effective date of the immediate suspension.

(3) a general description of the facts alleging that the licensee or driver education instructor poses an immediate danger to the physical or mental safety or health of a student that warrants immediate suspension. The description shall be in sufficient detail to apprise a person of ordinary intelligence of the nature of the violation.

(4) a statement that the licensee or driver education instructor has ten (10) days from the date of receipt of the notice of immediate suspension to request a hearing. The licensee or driver education instructor may request a hearing by mailing, certified and return receipt requested, or hand-delivering a letter to the Bureau.

(5) the street and post office addresses of the Bureau where requests for a hearing may be made.

C. Hearing. The Bureau shall grant a timely request for a hearing.

(1) The State Highway and Transportation Department shall appoint a hearing examiner.

(2) The hearing shall be held as soon as possible, but not later than thirty (30) days from the effective date of the immediate suspension.

(3) The immediate suspension will remain in effect until the conclusion of the hearing.

(4) The hearing may be held telephonically if both parties agree.

D. Hearing purpose. The hearing is for the sole purpose of determining if the Bureau has reasonable grounds to believe that the licensee or driver education instructor poses an immediate danger to the physical or mental safety or health of a student.

(1) If the hearing examiner finds that no immediate danger exists, the Bureau will withdraw the immediate suspension but may initiate revocation proceedings pursuant to 18.20.3.20 NMAC.

(2) If the hearing examiner finds that an immediate danger exists, the Bureau shall initiate revocation proceedings pursuant to 18.20.3.20 NMAC within ten (10) days of the end of the hearing. The immediate suspension will remain in effect until the conclusion of the revocation procedure.

E. Grounds for withdrawal of immediate suspension.

(1) The Bureau shall withdraw an immediate suspension if:

(a) a hearing is timely requested and the Bureau has not held the hearing within thirty (30) days of the effective date of the immediate suspension, unless the licensee or instructor requests a later hearing date and agrees in writing that the immediate suspension will remain in effect until the conclusion of the later hearing;

(b) the hearing examiner finds that an immediate danger does exist but the Bureau does not initiate revocation proceedings pursuant to 18.20.3.20 NMAC within ten (10) days of the ruling; or

(c) the licensee or driver education instructor does not request a hearing and the Bureau does not initiate revocation proceedings pursuant to 18.20.3.20 NMAC within thirty (30) days of the effective date of the immediate suspension.

(2) The Bureau may, in its discretion, withdraw an immediate suspension for any reason but shall document its decision in writing.

[18.20.3.21 NMAC - Rp, 18 NMAC 20.3.19 and 20.3.20, 1-1-03]

18.20.3.22 EXEMPTION OR VARIANCE:

A. Any school may petition for an exemption or variance from any of the requirements of this rule. Such petition shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the school and its customers, and on its competitors and their customers, if the exemption or variance is not granted;

(4) state how the exemption or variance will achieve the purposes of this rule and the Driving School Licensing Act; and

(5) state why the proposed alternative is in the public interest and is better than the requirement in the rule.

B. Such petition may include a motion that the Bureau stay the affected portion of this rule for the transaction specified in the motion.

C. Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by the licensee or other person with authority to bind the licensee.

D. The Bureau may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

[18.20.3.22 NMAC - N, 1-1-03]

HISTORY OF 18.20.3 NMAC

Pre-NMAC history. The material in this rule was previously filed with the State Records Center and Archives as SHTD Rule 93-1, Minimum Standards for Driver Education for Commercial Driving Schools, filed 9-3-93.

Repealed material.

18 NMAC 20.3, New Mexico's Driver Education Schools, filed 6-16-98 repealed 1-1-03.

NMAC history.

18 NMAC 20.3, New Mexico's Driver Education Schools, filed 6-16-98.