



Date: May 30, 2019

Prepared By: Bedeaux

Adopted Rule Report: Repeal 6.10.7 NMAC Statewide Standardized Testing Security Issues and Irregularities and Replace with 6.10.7 NMAC Standardized Testing Procedures and Requirements

Proposed Rule Abstract

1. Agency: Public Education Department (PED)
2. Rule Citation: 6.10.7 NMAC, Standardized Testing Procedures and Requirements
3. Rulemaking Action: Repeal and Replace
4. Register Issue and Date of Notice of Proposed Rulemaking: Volume 29, Issue 15, August 14, 2018
5. Effective Date: December 27, 2018
6. Citation to Specific Legal Authority: Sections 22-2-1, 22-2-2, and 22-2C-4 NMSA 1978
7. Short Explanation of the Rule's Purpose: Establish the roles, responsibilities, and procedures required for the preparation, storage, handling, distribution, security, and administration of standardized tests.
8. Link to Full Text of the Rule: https://webnew.ped.state.nm.us/wp-content/uploads/2018/08/6.10.7-NMAC_proposed-strikethrough_web.docx
9. How Information on the Rule Can Be Obtained: <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>, or from Jamie Gonzales at (505)-827-7889.
10. Comment Period and Deadlines: August 14, 2018 to September 17, 2018 at 5:00 PM. Written comments were submitted to Jamie Gonzales, Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, NM 87501, rule.feedback@state.nm.us, or by fax to (505) 827-6520.
11. Rule Hearing: September 17, 2018 from 9:00 a.m. to 11:00 a.m. at 300 Don Gaspar Avenue in Mabry Hall, Santa Fe, NM 87501.
12. Link to Permanent Agency Rulemaking Record: https://statenm.my.salesforce.com/sfc/p/4100000137C2/a/41000000DpYu/I_K0aRfqp6MFct_IEOJ09FAoXhx36JssHcLHMOgtE.0

Adopted Rule Update

1. Register Issue and Date of Adopted Rule: Volume 29, Issue 24, December 27, 2018
2. Date Notice of Proposed Rulemaking Was Reported to the Committee: September 27, 2018
3. Link to Proposed Rule Report: <https://www.nmlegis.gov/handouts/ALESC%20092618%20Item%207%20A.4%20-%20PROPOSED%20RULE%20Standardized%20Testing%20Requirements.pdf>
4. Minor, Non-Substantive Changes from the Rule as Proposed: Adopted rule makes minor changes to the ratios of standardized testing administrators to students, fixes a technical issue, and adds one additional prohibited test practice.

Summary of Adopted Rule

The December 27, 2018 issue of the *New Mexico Register* contained the Public Education Department's (PED) proposed repeal of 6.10.7 NMAC, "Statewide Standardized Testing Security Issues and Irregularities" and replacement with 6.10.7 NMAC, "Standardized Testing Procedures and Requirements." See **Attachment 1, 6.10.7 NMAC, Standardized Testing Procedures and Requirements**. The adopted rule reorganizes and clarifies standardized testing rules and responsibilities with

minor substantive changes to some requirements. The adopted rule reorganizes standardized testing regulations in a format that more clearly delineates the respective roles and responsibilities of individuals involved in standardized testing procedures, including superintendents and charter school head administrators, school district and charter school test coordinators, school test coordinators, and test administrators. Additionally, the adopted rule lists requirements for the administration of standardized tests, prohibited practices, and procedures in instances of suspected testing irregularities.

Changes from Proposed Rule

In response to written feedback from one charter school on the proposed rule, PED amended the ratio of test administrators to students to allow for more flexibility. As in the proposed rule, the adopted rule states a single test administrator may only supervise 25 students at a time. However, the ratio increases to 30 if the test administrator is accompanied by a second test administrator or a test proctor, which the rule defines as an individual who fills a support role during testing by gathering missing supplies or providing medical assistance. Test proctors are not required to undergo test administration training. Additionally, the adopted rule allows educational assistants to support testing accommodations for one-on-one and small group testing under the supervision of a test administrator. Educational assistants must receive training as test administrators and are not permitted to supervise test accommodations for more than 5 students at a time.

The adopted rule contains one additional prohibited test practice than the proposed rule. Under the adopted rule, individuals are not permitted to access secure online testing portals with unassigned or unauthorized log-in information.

Analysis of Proposed Rule

The proposed rule reorganizes existing standardized testing regulations in a format that more clearly delineates the roles and responsibilities of individuals involved in standardized testing procedures. Superintendents and charter school head administrators, school district and charter school test coordinators, school test coordinators, and test administrators each have a section clearly explaining their respective responsibilities. See **Attachment 2, Responsibilities of Individuals Associated with Standardized Testing under Proposed 6.10.7 NMAC**.

The proposed rule also explains the role of test proctors, staff responsible for supporting test administrators by gathering missing supplies and dealing with medical emergencies, although test proctors do not have a separate section in the rule.

The proposed rule allows locally-chartered charter schools to submit requests to superintendents to designate their own charter school test coordinator. Charter school test coordinators must meet all the requirements and responsibilities outlined for school district and charter school test coordinators.

Responsibilities of Individuals Associated with Standardized Testing

Superintendents and Charter School Head Administrators. Under the proposed 6.10.7 NMAC, school district superintendents and charter school head administrators will still be responsible for ensuring standardized tests are handled, prepared for, and administered in accordance with regulation and manuals provided by PED and test vendors. Superintendents and charter school head administrators will be required to designate a school district or charter school test coordinator, and may also designate a secondary test coordinator. Test coordinators will no longer be limited to a



duration of one to three years. Superintendents and charter school head administrators will also no longer be responsible for distributing a copy of 6.10.7 NMAC to test coordinators. Superintendents and charter school head administrators will now also need to complete and return a form to PED at the end of every semester verifying assessments remained secure, staff were adequately trained, and accommodation requirements were met.

School District and Charter School Test Coordinators. The responsibilities of school district and charter school test coordinators were not substantially altered by the proposed rule. School district and charter school test coordinators will still be required to attend PED trainings, however the frequency of these trainings may change; while the original rule stated trainings would happen twice per year, the proposed rule does not specify how often PED will hold trainings. School district and charter school test coordinators will continue to be responsible for providing training to staff before each spring and fall testing window and school district procedures comply with 6.10.7.12 NMAC. The proposed rule includes a new requirement that the school district or charter school test coordinator provide all training participants with written copies of 6.10.7 NMAC and all relevant statutes, regulations, and written school district or charter school guidance.

School Test Coordinators. School test coordinators are individuals at school sites responsible for the administration of standardized tests. School test coordinators will still be trained by school district and charter school test coordinators and will still be responsible for training all school personnel involved in test administration on the requirements of 6.10.7 NMAC and ensuring the school implements written school district or charter school policies in compliance with the rule.

Test Administrators. The final group of responsibilities mentioned in the proposed rule are those of test administrators, individuals responsible for administering standardized tests to students. The requirements for test administrators were not substantially changed in the proposed rule. Test administrators will be required to be trained by school test coordinators, and will be responsible for reviewing and administering tests consistent with the test administrator's manual. After testing each day, test administrators will be required to return the tests to the school, school district, or charter school test coordinator. If a test administrator observes any "testing irregularity" or student misconduct, they will be required to report the issue to the school, school district, or charter school test coordinator immediately.

Procedures for Standardized Testing

In addition to specific responsibilities for certain individuals, the proposed rule contains several sections with general standardized testing requirements that apply to all individuals involved in the standardized testing process. These procedures begin in the proposed 6.10.7.12 NMAC and continue through 6.10.7.15 NMAC. See

Various specific requirements of standardized test administration and security were moved to their own section in the proposed rule, 6.10.7.12 NMAC. Instead of listing these as specific requirements of school district and charter school test coordinators, the proposed rule now more appropriately lists them as general standardized testing requirements with which all individuals must comply.

In the absence of a school district or charter school policy that includes the requirements of 6.10.7.12 NMAC, the school district or charter school test coordinator will be required to develop checklists and written procedures to ensure compliance with the rule.

Test administrators will be required to utilize test proctors in halls to gather missing supplies or deal with medical situations, rather than leave the testing room themselves.

Testing irregularities refer to any observed conduct that raises doubts about the validity of any portion of a standardized test. Irregularities can occur at many points during the standardized testing process, including preparation, administration, security, or scoring.

Attachment 3, Regulations Regarding Standardized Test Administration under Proposed 6.10.7 NMAC.

Procedures for Standardized Testing. Many procedures for standardized testing were not significantly altered. The proposed rule eliminates two requirements: standardized test material not stored in sealed containers would no longer need to be segregated, wrapped in clear or unclear paper, and sealed with packing tape; and substitute teachers, educational assistants, school nurses, and athletic coaches would no longer be able to administer standardized tests. The proposed rule also contains three new regulations: records detailing the removal of standardized testing materials must document whether the materials were removed from school grounds; the ratio of test administrators to students shall not exceed 25 students per administrator; and test proctors must be used to support administrators in gathering supplies and dealing with medical situations.

Prohibited Practices for Standardized Testing. Individuals will be prohibited from all of the same practices as in current rule as well as several new practices. Under the proposed rule, students would be prohibited from having smart watches, media players, headphones and backpacks during standardized tests. Additionally, the following practices would be prohibited: administering a standardized test to an immediate family member; teaching from, possessing, or disseminating a photocopy of any portion of a test; copying copyrighted materials for the purpose of distribution; and coaching or otherwise inappropriately assisting in written student answers.

Nondisclosure of Standardized Test Materials. The proposed rule does not significantly alter the permissions of individuals regarding the confidentiality of standardized tests. Persons given access to standardized test materials will still be required to sign a non-disclosure form, and may only review standardized test materials at PED under the direct supervision of PED staff. However, under the proposed rule, PED may now choose to release select portions of assessments for the purposes of training and professional development. Test items not released by the department shall not be released by any unauthorized individual or organization.

Testing Irregularities. Existing regulations regarding testing irregularities were kept intact in the proposed rule. Individuals who suspect a testing irregularity are required to report the issue within 24 hours to the school district or charter school test coordinator, who will have three days to conduct an investigation and submit a formal report to PED. Individuals who suspect the school district or charter school test coordinator has engaged in a testing irregularity will be required to report the issue directly to PED within three days of learning of the irregularity. PED will continue to use its discretion in investigating testing irregularities, and may take any number of the following corrective measures:

Under current rules, students are prohibited from having scrap paper, tablets, laptops, cell phones, cameras, calculators, calculator watches, and rulers during a standardized test.

Individuals suspected of testing irregularities will be given as much access to the relevant portions of the assessment as is reasonably necessary to prepare for a hearing, but all material used as evidence at a hearing is subject to confidentiality by all hearing attendees.

A violation of any regulation in 6.10.7 NMAC constitutes a testing irregularity and shall give PED good and just cause to suspend or revoke a person's license.



- Direct the school district or charter school or a named individual to cease and desist engaging in a particular irregularity or further testing during the current school year;
- Revoke the individual's access to standardized test materials to ensure test security;
- Recommend further action PED deems reasonable and necessary to maintain test security;
- Invalidate the standardized test results and inform the school district or charter school that the affected student will not receive scores on portions or all of a standardized assessment;
- Refer the matter for possible suspension or revocation of a person's licensure pursuant to procedures set forth in 6.68.3 NMAC;
- Refer the matter to other department divisions for appropriate action;
- Take any other action authorized by state or federal law or regulation; or
- Modify school, school district, and charter school accountability determinations.

Under the proposed rule, corrective measures like those to the right would no longer be the sole responsibility of the PED accreditation team, but of the appropriate division at PED.

Because standardized tests like the PARCC now constitute the primary demonstration of competency for high school students, invalidating student test scores could require students to pursue an alternative demonstration of competency in order to graduate.

The proposed rule would eliminate a provision that allows students whose tests were affected by testing irregularities to have the test re-administered in a similar form. Paragraph 4 of Subsection B of the proposed Section 6.10.7.15 NMAC states students affected by irregularities will not receive scores on any portion of the standardized test affected by a testing irregularity.

Technical Issues

The adopted rule fixed a technical issue pointed out in written public comment by LESC staff. Paragraph B of Section 6.10.7.10 NMAC, Responsibilities of School Test Coordinators now correctly refers to 6.10.7.12 NMAC, Procedures for Standardized Testing, rather than 6.10.7.13 NMAC, Nondisclosure of Standardized Test Materials.



New Mexico Register / Volume XXIX, Issue 24 / December 27, 2018

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 10 PUBLIC SCHOOL ADMINISTRATION - PROCEDURAL REQUIREMENTS
PART 7 STANDARDIZED TESTING PROCEDURES AND REQUIREMENTS**

6.10.7.1 ISSUING AGENCY: Public Education Department, herein after the department.
[6.10.7.1 NMAC - Rp, 6.10.7.1 NMAC, 12/27/2018]

6.10.7.2 SCOPE: All school districts, charter schools, state educational institutions and bureau of Indian education (BIE) schools that administer standardized tests, as well as their employees or volunteers who have access to those standardized tests.

[6.10.7.2 NMAC - Rp, 6.10.7.2 NMAC, 12/27/2018]

6.10.7.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2 and 22-2C-4 NMSA 1978.
[6.10.7.3 NMAC - Rp, 6.10.7.3 NMAC, 12/27/2018]

6.10.7.4 DURATION: Permanent
[6.10.7.4 NMAC - Rp, 6.10.7.4 NMAC, 12/27/2018]

6.10.7.5 EFFECTIVE DATE: December 27, 2018, unless a later date is cited at the end of a section.
[6.10.7.5 NMAC - Rp, 6.10.7.5 NMAC, 12/27/2018]

6.10.7.6 OBJECTIVE: This rule establishes the roles, responsibilities, and procedures required for the preparation, storing, handling, distribution, security, and administration of standardized tests.
[6.10.7.6 NMAC - Rp, 6.10.7.6 NMAC, 12/27/2018]

6.10.7.7 DEFINITIONS:

A. **"District or charter test coordinator"** or **"DTC"** means the licensed school instructor, counselor, student success advisor, or administrator in a school district, charter school, state educational institution, or bureau of Indian education school (BIE) designated by the district superintendent, charter administrator, or governing authority of a state educational institution or BIE school with the overall responsibility for:

- (1) handling, storing, and distributing standardized tests;
- (2) recording standardized test distribution by booklet or answer sheet number;
- (3) collecting and administering standardized tests;
- (4) training school personnel in test security matters; and
- (5) following proper test administration procedures.

B. **"Instructional support provider"** means a licensed educational diagnostician, interpreter for the deaf, rehabilitation counselor, school counselor, school psychologist, school social worker, or speech language pathologist.

C. **"New Mexico statewide assessment program"** or **"NMSAP"** means the assessment program that is approved by the department and designates the required standardized tests to be administered in New Mexico public school districts, charter schools, state educational institutions, and BIE education schools.

D. **"Proctor"** means a designated, trained person who assists the test administrator during the time of testing.

E. **"School test coordinator"** means the licensed school instructor, counselor, student success advisor, administrator, or instructional support provider responsible for:

- (1) handling, storing, and distributing standardized tests for administration to test administrators;
- (2) recording standardized test distribution by booklet or answer sheet number;
- (3) collecting and administering standardized tests;
- (4) training school personnel in test security matters; and
- (5) following proper test administration procedures within the school site.

F. **"Standardized test"** means any nationally norm-referenced assessment, state or national performance assessment, or state or national criterion-referenced assessment.

G. "Standardized test material" means a standardized test or any related items for paper-based or online testing such as examiner guides, preparation materials, student test tickets, test security guides, answer sheets or booklets, and any student notes, answers, or essays generated during the administration of a standardized test.

H. "Test administrator" means the licensed school instructor, counselor, student success advisor, administrator, or instructional support provider in a school district, charter school, state educational institution, or BIE education school with the responsibility of administering tests under the guidelines outlined in 6.10.7 NMAC.

I. "Test administration window" means a specified period of time, as designated by the department assessment bureau, during which statewide tests shall be administered.

J. "Testing irregularity" means any circumstance within or beyond the control of a school district or charter that raises doubts with the department, district, or charter about the propriety of standardized testing procedures, preparation materials, standardized testing administration, standardized testing security, student scores attained from standardized testing, or educators' or individuals' conduct observed during standardized test administration.

[6.10.7.7 NMAC - Rp, 6.10.7.7 NMAC, 12/27/2018]

6.10.7.8 RESPONSIBILITIES OF SUPERINTENDENTS AND CHARTER ADMINISTRATORS

It shall be the responsibility of each superintendent or charter administrator to ensure that standardized tests are handled, stored, prepared for, and administered in accordance with 6.10.7 NMAC and test manuals provided by the department or testing vendors.

A. Superintendents and state charter administrators shall designate one DTC and may designate a secondary test coordinator for the purpose of delegating the duties necessary to comply with 6.10.7 NMAC.

B. Test administration at district charters shall be the responsibility of the DTC designated by the district superintendent. District charters may submit documented requests to designate their own test coordinator. Requests shall be submitted to and approved by the superintendent at the start of the school year. Failure to meet any standardized test administration policies or practices will result in removal of the district charter test coordinator without appeal. Upon such determination, all test coordination responsibilities shall defer back to the authorizing district's test coordinator.

C. The designation of district, charter, and secondary test coordinators shall:

- (1) be in writing; and
- (2) identify the name, title, and contact information of the person(s) so delegated.

D. The superintendent or charter administrator shall complete and return the verification of test security, staff training, and accommodations requirements documentation to the department within 10 business days after the close of all NMSAP testing at the end of each semester.

[6.10.7.8 NMAC - Rp, 6.10.7.8 NMAC, 12/27/2018]

6.10.7.9 RESPONSIBILITIES OF DISTRICT OR CHARTER TEST COORDINATORS:

A. The DTC shall attend all trainings indicated as mandatory by the department in their entirety. DTC attendance at mandatory trainings shall be subject to verification.

B. Once trained, the DTC shall provide training for all secondary test coordinators, school test coordinators, and all personnel involved in test administration, preparation, and security.

C. The DTC shall provide principals the same training as test administrators as well as additional training in the storing, handling, destruction, and administration of standardized test material. Assistant principals shall, at a minimum, be knowledgeable of the requirements for the administration of standardized tests set forth in Subsection C of 6.10.7.12 NMAC.

D. The DTC shall inform all teachers, educational assistants, substitutes, volunteers, licensed and unlicensed office staff, and anyone else who is likely to come into contact with standardized testing material of the need to maintain strict standardized test security by:

- (1) developing and disseminating handouts to these individuals;
- (2) providing training to these individuals; and
- (3) posting conspicuous signs near school copy machines prior to and during a standardized

test that warn of department rules prohibiting the copying of any portion of a standardized test, including student responses and any other standardized testing material.

E. The DTC shall provide training participants with copies of the following:

- (1) 6.10.7 NMAC and any other relevant statute or regulation, if necessary;
- (2) written district or charter school guidance documents;
- (3) testing schedules;

(4) test administration manuals; and
 (5) the department shall inform DTCs of the test administration windows in writing at least annually. DTCs shall ensure that all required training, including online testing and test security training, is administered prior to the fall and spring test administration windows.

F. In the absence of a written district or charter policy that includes the procedures outlined in 6.10.7.12 NMAC, the DTC shall develop checklists and written procedures for internal use to ensure compliance with 6.10.7 NMAC.

G. The DTC shall:

- (1) ensure all procedures for standardized testing comply with 6.10.7.12 NMAC; and
- (2) carry out infrastructure trials, as necessary, and online testing preparations.

[6.10.7.9 NMAC - Rp, 6.10.7.9 NMAC, 12/27/2018]

6.10.7.10 RESPONSIBILITIES OF SCHOOL TEST COORDINATORS:

A. The school test coordinator(s) shall be trained by the DTC and shall provide training for all school personnel involved in test administration, preparation, and security, unless the DTC provides such training.

B. The school test coordinator(s) shall use the written district or charter policy or checklists and written procedures developed by the DTC to implement the procedures outlined in 6.10.7.12 NMAC.

[6.10.7.10 NMAC - Rp, 6.10.7.10 NMAC, 12/27/2018]

6.10.7.11 RESPONSIBILITIES OF TEST ADMINISTRATORS:

A. Test administrators shall be trained by the school test coordinator or the DTC.

B. Trainings shall inform test administrators of their duty to promptly report testing irregularities as soon as they are aware to the DTC.

C. Test administrators shall:

understood;

- (1) review the standardized test administrator's manual so that administration procedures are understood;
- (2) use test proctors stationed in the hallway to gather missing supplies or deal with medical situations;

(3) administer the standardized test according to the directions and specifications in the standardized test administrator's manual;

- (4) only administer the standardized test during the designated test administration window;

(5) return the standardized tests to the school, district, or charter test coordinator after testing each day during the test administration window for secure overnight storage; and

(6) take immediate corrective action if a student is observed engaging in any prohibited conduct during a standardized test.

[6.10.7.11 NMAC - Rp, 6.10.7.11 NMAC, 12/27/2018]

6.10.7.12 PROCEDURES FOR STANDARDIZED TESTING:

A. Storing and handling of standardized test material.

(1) Standardized tests shall be counted, inventoried, and stored in a secure, locked location with limited access.

(2) Space permitting, standardized test material shall be stored in sealed containers in a secure area.

(3) Standardized test materials, as directed by the department, shall be disposed of by either shredding or returning such materials to the test vendor.

B. Accessing standardized test material.

- (1) Access to standardized test materials shall be restricted, limited, and controlled.

(2) Personnel with access to standardized test materials shall be designated by the superintendent or charter administrator.

(3) The removal of standardized test materials from their secure, locked location for the purposes of test administration and submittal at the close of the test administration window shall be logged and recorded. Records shall:

that were removed;

- (a) identify the individual who removed standardized test materials;
- (b) identify the name(s) and identifying number(s) of the standardized test materials
- (c) identify the number of standardized test materials that were removed;

- (d) identify the date the standardized test materials that were removed;
- (e) include documentation of any standardized test materials taken off school grounds and their return;
- (f) be maintained for at least five calendar years; and
- (g) be made available for review by the department upon request.

C. Administration of standardized tests.

(1) Only licensed school instructors, counselors, student success advisors, administrators, and instructional support providers shall administer a standardized test.

(2) Substitutes, educational assistants, school nurses, and coaches shall not administer standardized tests unless the individual additionally holds valid licensure to serve as a teacher, counselor, student success advisor, administrator, or instructional support provider.

(3) Educational assistants may be permitted to support testing accommodations for one-on-one and small group testing under the supervision of a test administrator.

- (b) Educational assistants administering accommodations shall:
 - (i) meet the requirements stated in 6.10.7.11 NMAC;
 - (ii) receive the written approval of the DTC;
 - (iii) be under the supervision of a test administrator as defined in Subsection H of 6.10.7.7 NMAC; and
 - (iv) not support accommodations for a group larger than five students.

(4) Training shall be provided to all persons who administer or proctor a standardized test. Individuals shall not be permitted to administer or proctor a standardized test without first completing training in accordance with the timelines, topics, and materials designated by the department.

(a) Sign-in forms listing training topics, printed name, and signature shall be maintained as a record by date to identify all individuals who have completed the district or charter training in test security, practice materials, and administration of standardized tests.

(b) Each sign-in record shall be maintained for at least five calendar years and be made available for review by the department upon request.

(5) The ratio of test administrators to students shall not exceed 25 students per test administrator.

(a) Tests may be administered to no greater than 30 students per test administrator if, at a minimum, an additional test administrator or test proctor is present for the duration of the test.

(b) At no point shall the number of students tested simultaneously and in the same location exceed 30 students without the presence of at least two test administrators or one test administrator and one test proctor.

- (6) Test proctors shall be utilized to support the following:
 - (a) gathering of missing supplies;
 - (b) assistance with medical situations; and
 - (c) monitoring of the testing environment in the presence of a test administrator.

D. Prohibited Practices. The following practices shall be prohibited:

(1) changing a student's standardized test answers, erasing double-marked or lightly erased or lightly marked answers, or directing or suggesting that a student change a standardized test answer;

(2) providing students with a review of specific standardized test items, specific standardized test items with minor changes in settings or numbers, verbal or written restatements or paraphrasing of standardized test items, specific vocabulary from standardized test directions or standardized test items, or answers before, during or after a standardized test;

(3) discussing, photocopying, or reproducing in any other fashion including paraphrasing, any portion of a standardized test or student responses;

(4) affording any student under a standardized administration extra time to complete a timed subtest, unless permitted as an accommodation in the student's IEP, 504 plan, or English learner plan;

(5) reading standardized test items aloud to students unless required in a specific standardized test or unless required as an accommodation in the student's IEP, 504 plan, or English learner plan;

(6) permitting students during a standardized test to have on or near their desk or on their person, any unauthorized items, including scrap paper, tablets, laptop computers, cell phones with or without cameras, cameras, calculators, calculator watches, smart watches, media players, headphones, backpacks, and rulers unless any of these are required or permitted by standardized test instructions;

- (7) permitting students to observe standardized test vocabulary words with definitions,

addition or multiplication tables (in various forms), spelling words on the standardized test, or similar assistance material during the administration of the standardized test;

- (8) permitting students to talk, become disruptive, or exchange any test materials;
- (9) permitting students to begin a subtest, leave the testing room, and return to finish the subtest;
- (10) permitting students to enter a testing room after the standardized test has already commenced;
- (11) permitting standardized test material to remain unattended in an unlocked room;
- (12) taking standardized test material off campus unless specifically authorized by the DTC;
- (13) displaying or failing to conceal visual aids that may assist students in the testing room;
- (14) administering a standardized test to immediate family members or relatives including children, stepchildren, siblings, nieces, nephews, or grandchildren;
- (15) teaching from, possessing, or in any way disseminating a photocopy or other reproduced or paraphrased standardized test or portion of a standardized test;
- (16) copying copyrighted test preparation materials for the purpose of distribution;
- (17) coaching or otherwise inappropriately assisting with the selection or writing of student answers; and
- (18) accessing secure, online testing portals with unassigned log-in information

[6.10.7.12 NMAC - Rp, 6.10.7.12 NMAC, 12/27/2018]

6.10.7.13 NONDISCLOSURE OF STANDARDIZED TEST MATERIALS:

A. All standardized tests in the NMSAP are the proprietary interest of the department and shall be safeguarded.

B. Any person permitted to review a standardized test that is part of the NMSAP or participating in a review associated with assessment development procedures shall sign a nondisclosure form offered by the department agreeing not to reveal any confidential materials, specific standardized test items, or specific concepts or skills to be measured on the standardized test to include verbal or written restatements of standardized test items, minor changes in settings or numbers, and specific vocabulary from standardized test directions or standardized test items.

C. Any person given permission to review an NMSAP assessment may only review the assessment on-site during department office hours with the supervision of a department employee, unless permission to follow alternative review procedures is granted by the department. No NMSAP assessment may be written on, marked, electronically copied, hand-duplicated, or otherwise removed from the premises of the department or a local education agency in possession of an NMSAP assessment.

D. Upon request, a person suspected of engaging in a testing irregularity shall be given as much access to an NMSAP assessment as is reasonably necessary to prepare for a pending meeting or hearing relating to the suspected testing irregularity. The original or copy of any NMSAP assessment used as evidence at any meeting or hearing shall also be subject to confidentiality by all attendees and participants.

E. With the permission of testing vendors, the department may choose to release select portions of standardized assessments for the purposes of training and professional development. Under no circumstance shall any part of a standardized test not previously released by the department be released by any unauthorized individual or organization.

[6.10.7.13 NMAC - Rp, 6.10.7.13 NMAC, 12/27/2018]

6.10.7.14 REPORTING STANDARDIZED TESTING IRREGULARITIES: To ensure the integrity of standardized tests and their results, the principles of test security shall be strictly followed. Accordingly, material violations of this rule or breaches of test security shall constitute good and just cause to suspend or revoke a person's department licensure.

A. School personnel and proctors shall report suspected testing irregularities to the DTC within 24 hours.

B. Districts and charters shall report by telephone or e-mail suspected testing irregularities to the department within three business days of being notified of a suspected testing irregularity.

C. The DTC shall submit a testing irregularity report within ten business days to the department assessment bureau that contains:

- (1) the allegation(s);
- (2) the findings from a completed investigation at the local level; and

(3) the corrective action taken, if any.

D. If a DTC is suspected of having engaged in a testing irregularity, the individual who discovers the irregularity shall notify the department assessment bureau by telephone or e-mail within three business days of learning of the suspected irregularity.

E. Districts and charters shall cooperate with the department if further investigation or action is needed.

[6.10.7.14 NMAC - Rp, 6.10.7.14 NMAC, 12/27/2018]

6.10.7.15 CORRECTIVE MEASURES FOR STANDARDIZED TESTING IRREGULARITIES:

A. The department reserves the right to investigate suspected testing irregularities and confiscate any materials deemed necessary to conclude the investigation at their discretion.

B. Any combination of the following corrective measures may be taken by the department:

(1) direct the district or charter or a named individual to cease and desist engaging in a particular testing irregularity or the administration of further standardized tests during the current school year;

(2) revoke access to standardized test materials to ensure test security;

(3) recommend any further action it deems reasonable and necessary to maintain test security;

(4) invalidate the standardized test results and inform the district or charter that the affected student will not receive scores on portions or all of a standardized assessment;

(5) refer the matter for possible suspension or revocation of a person's educator or administrator licensure or other department licensure pursuant to procedures set forth in 6.68.3 NMAC;

(6) refer the matter to other department divisions for appropriate action;

(7) take any other action authorized by state or federal law or regulation; or

(8) modify school, district, and charter accountability determinations.

[6.10.7.15 NMAC - N, 12/27/2018]

HISTORY OF 6.10.7 NMAC

History of Repealed Material:

6.10.7 NMAC, Statewide Standardized Testing Security Issues and Irregularities, filed 9/28/2001 - Repealed effective 12/27/2018.

Other History of 6.10.7 NMAC:

6.10.7 NMAC, Statewide Standardized Testing Security Issues and Irregularities, filed 9/28/2001, was repealed and replaced by 6.10.7 NMAC, Standardized Testing Procedures and Requirements, effective 12/27/2018.

Responsibilities of Individuals Associated with Standardized Testing under Proposed 6.10.7 NMAC

Entity	Current Responsibilities	New Responsibilities	Eliminated Responsibilities	Notes
Public Education Department	<ul style="list-style-type: none"> • Provide training for school district and charter school test coordinators. • Inform school district and charter school test coordinators of test administration windows at least annually. • Investigate and take action in incidences of suspected testing irregularities. 			
Superintendent or Charter School Head Administrator 6.10.7.8 NMAC	<ul style="list-style-type: none"> • Ensure standardized tests are handled, stored, prepared for, and administered in accordance with 6.10.7 NMAC and test manuals provided by PED and test vendors. • Designate in writing a school district or charter school test coordinator and optionally a secondary test coordinator. 	<ul style="list-style-type: none"> • Complete and return a form verifying test security, staff training, and accommodations requirements within 10 days of the close of testing at the end of each semester. • Locally chartered charter schools may submit requests to superintendents to designate their own charter school test coordinator. 	<ul style="list-style-type: none"> • Test coordinators are no longer limited to a duration of one to three years. • Superintendents and charter school head administrators no longer need to indicate test coordinators have been given a copy of 6.10.7 NMAC. 	<p>The rule specifically requires superintendents and charter school head administrators to ensure schools and school districts are meeting the requirements of 6.10.7 NMAC and test manuals provided by PED and test vendors.</p> <p>Failure of a locally-chartered charter school test coordinator to meet any standardized test administration policies or practices will result in removal of the test coordinator without appeal.</p>
School District or Charter School Test Coordinators 6.10.7.9 NMAC	<ul style="list-style-type: none"> • Attend all PED-mandated trainings. • Provide training for all secondary test coordinators, school test coordinators, and all personnel involved in test administration, preparation, and security. • Provide the same training for principals, with additional information on storing, handling, destroying and administering standardized tests. Assistant principals shall be knowledgeable of the administration of standardized tests required in Subsection C of 6.10.7.12 NMAC. • Inform all teachers, educational assistants, substitutes, volunteers, office staff, and anyone else likely to come into contact with standardized tests of the need to maintain strict security. • Ensure all training is administered prior to the spring and fall test administration windows. • Ensure all procedures for standardized testing comply with 6.10.7.12 NMAC. In the absence of written school district or charter school policies that include these requirements, the coordinator shall develop checklists and written procedures to ensure compliance. 	<ul style="list-style-type: none"> • Provide training participants with written copies of the following: 6.10.7 NMAC and any other relevant statute or regulation; written school district or charter school guidance documents; testing schedules; and test administration manuals. 		<p>All PED trainings are mandatory, but language requiring PED to hold training workshops semiannually was removed.</p> <p>Various specific requirements of standardized test administration and security were moved to their own section, 6.10.7.12 NMAC. Instead of listing these as specific requirements of school district and charter school test coordinators, the proposed rule now more appropriately lists them as general standardized testing requirements with which all individuals must comply.</p>

Entity	Current Responsibilities	New Responsibilities	Eliminated Responsibilities	Notes
School Test Coordinators 6.10.7.10 NMAC	<ul style="list-style-type: none"> • Shall be trained by school district or charter school test coordinator. • Shall provide training for all school personnel involved in test administration, preparation, and security unless the school district or charter school test administrator provides the training. • Shall use written district or charter school policies and checklists to implement 6.10.7.13 NMAC (Note: this is likely an incorrect citation, meant to refer to 6.10.7.12 NMAC which contains testing requirements). 		<ul style="list-style-type: none"> • School test coordinators are no longer specifically required to implement and carry out test material preparation, handling, storage, administration, and secure disposal. 	<p>Because school test coordinators will be responsible for following written school district and charter school procedures, the eliminated responsibilities may still apply to school test coordinators, depending on the school district or charter school policy.</p>
Test Administrators 6.10.7.11 NMAC (previously called "Staff")	<ul style="list-style-type: none"> • Promptly report testing irregularities to the school district or charter school test coordinator as soon as they are aware. • Review the standardized test administrator's manual. • Use test proctors in the hall to gather missing supplies or deal with medical situations. • Administer the test according to the test administrator's manual. • Administer the test during the test administration window. • Return the standardized tests to the school, school district, or charter school test coordinator after testing each day. • Take prompt, corrective action if a student is observed engaging in any prohibited conduct during the test. 		<ul style="list-style-type: none"> • Test administrators no longer need to "familiarize themselves" with the principles of standardized test security. Training shall be provided by the school district or charter school test coordinator or by the school test coordinator. 	<p>The proposed language eliminated a chain of command that would require test administrators to direct questions first to the school district or charter school test coordinator, then to the assessment and evaluation unit of PED.</p> <p>Two responsibilities of test administrators were previously listed in a separate section. They were moved to 6.10.7.11 NMAC to improve clarity.</p>

General Regulations Regarding Standardized Test Administration under Proposed 6.10.7 NMAC

Reg. Type	Current	New Regulations	Eliminated Regulations
Procedures for Standardized Testing 6.10.7.12 NMAC	<ul style="list-style-type: none"> • Standardized tests shall be counted, inventoried, and stored in a secure, locked location with limited access. • Space permitting, standardized test material shall be stored in sealed containers in a secure area. • Standardized test materials, as directed by the department, shall be disposed of by either shredding or returning such materials to the test vendor. • Access to standardized tests shall be restricted, limited and controlled. • Personnel with access to standardized tests shall be designated by the superintendent or charter school head administrator. • The removal of standardized test materials from their secure location shall be recorded, listing the following: the individual who removed the material, the names and ID numbers of the students whose materials are materials removed, the number of materials that were removed, the date they were removed. • Records shall be maintained for five years and be made available for review by PED at the department's request. • Licensed school instructors, administrators, and instructional support providers shall administer standardized tests. • Training shall be provided to all persons who administer or proctor standardized tests. Sign-in forms for all trainings shall be maintained as a record for five years to identify all individuals certified to administer tests. 	<ul style="list-style-type: none"> • Records detailing the removal of standardized tests must document whether standardized test materials were taken off school grounds and returned. • The ratio of test administrators to students shall not exceed 25 students per test administrator. • Test proctors shall be used to support test administrators in gathering missing supplies and assisting with medical situations 	<ul style="list-style-type: none"> • Standardized test material not stored in a sealed containers no longer need to be segregated, wrapped in clear or unclear paper, and sealed securely with packing tape. • Substitute teachers, educational assistants, school nurses, and athletic coaches shall no longer administer standardized tests.
Prohibited Practices 6.10.7.12 NMAC	<p>The following practices are prohibited:</p> <ul style="list-style-type: none"> • Changing a student's answers or directing that a student change a standardized test answer; • Providing students with a review of specific test items, or test items with minor changes in settings or numbers, verbal or written restatements of test items, specific vocabulary from test directions or items, or test answers; • Discussing, photocopying, or reproducing any portion of a test; • Affording any student additional time to complete a timed subtest, unless permitted in the student's special accommodations; • Reading standardized test items aloud to students unless required in a student's special accommodations; • Permitting students to have on or near their desk any unauthorized items, including scrap paper, tablets, laptops, cell phones, cameras, calculators, calculator watches, and rulers; • Permitting students to observe test vocabulary words with definitions, addition or multiplication tables, spelling words, or similar assistance material during the administration of the test; • Permitting students to talk, become disruptive, or exchange test materials; • Permitting students to begin a subtest, leave the room, and return to finish the subtest; • Permitting students to enter a testing room after the test has already begun; • Permitting standardized testing material to remain unattended in an unlocked room; • Taking test material off campus unless specifically authorized by the school district or charter school test coordinator; and • Displaying or failing to conceal visual aids that may assist students in the testing room. 	<p>The following practices are now prohibited:</p> <ul style="list-style-type: none"> • Unauthorized items for students to have on or near their desk now include smart watches, media players, headphones, and backpacks. • Administering a standardized test to immediate family members or relatives; • Teaching from, possessing, or disseminating a photocopy of any portion of a test; • Copying copyrighted test preparation materials for the purpose of distribution; and • Coaching or otherwise inappropriately assisting with written student answers. 	

Reg. Type	Current	New Regulations	Eliminated Regulations
Reporting Testing Irregularities 6.10.7.14 NMAC	<ul style="list-style-type: none"> • To ensure the integrity of standardized tests, the principles of test security shall be strictly followed. Violations of these regulations shall constitute good and just cause to suspend or revoke a person's PED licensure. • School districts and charter schools shall report by telephone or email suspected testing irregularities to PED within three business days of being notified of a suspected irregularity. • The school district or charter school test coordinator shall submit a report that contains the allegations, the findings of a local investigation, and corrective action taken, if any. • School districts and charter schools shall cooperate with PED if further investigation or action is needed. 	<ul style="list-style-type: none"> • School personnel and volunteers shall report suspected testing irregularities within 24 hours (previously, irregularities needed to be reported "promptly"). • Individuals who suspect school district or charter school test coordinator of having engaged in a testing irregularity shall notify PED within three days of learning of the irregularity. 	
Corrective Measures for Testing Irregularities 6.10.7.15 NMAC	<p>PED reserves the right to investigate testing irregularities and confiscate any materials deemed necessary to conclude the investigation.</p> <p>PED may take a combination of any of the following corrective measures:</p> <ul style="list-style-type: none"> • Direct the school district or charter school or a named individual to cease and desist engaging in a particular irregularity or further testing during the current school year; • Revoke access to standardized test materials to ensure test security; • Recommend further action PED deems reasonable and necessary to maintain test security; • Invalidate the standardized test results and inform the school district or charter school that the affected student will not receive scores on portions or all of a standardized assessment; • Refer the matter for possible suspension or revocation of a person's licensure pursuant to procedures set forth in 6.68.3 NMAC; • Refer the matter to other department divisions for appropriate action; • Take any other action authorized by state or federal law or regulation; or • Modify school, school district, and charter school accountability determinations. 		<ul style="list-style-type: none"> • Students whose test results are invalidated as the result of a testing irregularity will no longer be able to have the test readministered in a similar form. • Administrative action is no longer the sole responsibility of the PED accreditation team.