

Proposed Rule Abstract

1. **Agency:** Public Education Department
2. **Rule Citation:** 6.60.7 NMAC, Educator Licensure Application Fee
3. **Rulemaking Action:** Repeal and Replace
4. **Register Issue and Date of Notice of Proposed Rulemaking:** Volume 30, Issue 12, June 25, 2019
5. **Effective Date:** August 13, 2019
6. **Citation to Specific Legal Authority:** Sections 22-2-1, 22-2-2, 22-8-44, 22-10-4, and 22-10A-3 NMSA 1978
7. **Short Explanation of the Rule's Purpose:** To update educator license fees and clarify the cost for each type of license.
8. **Link to Full Text of the Rule:** https://webnew.ped.state.nm.us/wp-content/uploads/2019/06/6.60.7_License-Fee-proposed-striethrough_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 John Sena at (505) 570-7816
10. **Comment Period and Deadlines:** June 25, 2019 to July 26, 2019. Written comments may be submitted to John Sena, Policy Division, New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, New Mexico 87501, rule.feedback@state.nm.us, or by fax to (505) 827-6520
11. **Rule Hearing:** July 26, 2019, from 1:00 p.m. to 4:00 p.m., at 300 Don Gaspar Avenue in Mabry Hall, Santa Fe, NM 87501
12. **Link to Permanent Agency Rulemaking Record:** http://statenm.force.com/public/SSP_RuleHearingSearchPublic

Adopted Rule Update

1. **Register Issue and Date of Adopted Rule:** Volume 30, Issue 15, August 13, 2019
2. **Date Notice of Proposed Rulemaking Was Reported to the Committee:** July 25, 2019
3. **Link to Proposed Rule Report:** <https://www.nmlegis.gov/handouts/ALESC%20072419%20Item%207%20A.4%20-%20PROPOSED%20RULE%20-%20Educator%20Licensure%20Application%20Fee.pdf>
4. **Minor, Non-Substantive Changes from the Rule as Proposed:** The adopted rule addressed minor grammar and technical issues, including those identified by LESC. See **Attachment 1, Adopted Rule, 6.60.7 NMAC, Educator Licensure Application Fee.**

Summary of Proposed Rule

The June 25, 2019 issue of the *New Mexico Register* contained a Notice of Proposed Rulemaking for Part 7 of 6.60 NMAC, Educator Licensure Application Fee. The proposed rule would clarify and update fee amounts for various educator licenses, endorsements,

and certifications. The rule also would make minor updates to licensure application procedures, as well as change the process for reviewing claims of indigence for waiver of licensure fees.

Analysis

Statutory Authority. The Public Education Department (PED) cites the following sections of law as authority for the rulemaking: Sections 22-2-1 and 22-2-2 NMSA 1978, detailing the general powers of the Secretary of Public Education and PED and PED’s general duties, respectively; Section 22-8-44 NMSA 1978, establishing the educator licensure fund; and Section 22-10A-3 NMSA 1978, requiring licensure applicants to pay fees for licenses. Additionally, the proposed rule cites Section 22-10-4 NMSA 1978, but that section has been repealed. See “Technical Issues.”

Definitions. The rule proposes to update the definition for “indigence” as “the financial inability to pay or afford, without extreme hardship, an application fee.” In the current rule, “indigency” is defined as “the inability, as determined by the professional licensure bureau of the PED, to pay a licensure fee from available present income and assets without due hardship.” See “Standards of Indigence.”

The proposed rule would also add new definitions for terms including “applicant,” “application,” “application fee,” and “background check fee.” The rule proposes “PDD” be defined by cross-referencing the professional development dossier detailed in Section 11 of 6.69.4 NMAC, Performance Evaluation System Requirements for Teachers. “PDD strand” is defined as one of the three categories – instruction, student learning, and professional development – used to measure evidence of teacher competency on the professional development dossier, the submission of any of which will incur fees.

Licensure Fee Schedule. The rule proposes to raise the fee for most initial and renewed licenses. Initial licensure application fees would be raised 20 percent, from \$125 to \$150, unless the application is for licensure of educational assistants, school health assistants, and substitute teachers, all of which would be increased 43 percent, from \$35 to \$50. The rule also proposes a new fee of \$50 for applicants for initial certification for Native American language and culture. Currently PED charges \$35 for this certification, although the amount is not outlined in rule.

A license is a basic permit allowing one to engage in a professional practice, in this case, practice as an educator, school health assistant, athletic coach, substitute teacher, administrator, or educational assistant. Endorsements for expertise in specific areas, such as teaching English to speakers of other languages (TESOL) require additional training and can be added to an existing license. Currently, the only certification in PED rule is the proposed one for Native American language and culture, which does not require a bachelor’s degree, and was created to permit persons with expertise in a Native language to teach students.

Existing license renewal fees would be increased by 26 percent, from \$95 to \$120, except fees for educational assistants, school health assistants, and substitute teachers, which would all be increased 43 percent, from \$35 to \$50. The rule proposes a new \$130 fee for renewal of an “existing educator license as an administrator”; PED staff have indicated this language should refer to an “administrator’s license.”

The renewal fee for the Native American language and culture certification would be \$50 under the proposed rule; as with the initial certification, PED charges \$35 for this renewal, though it is not currently in rule. Although there are no other such certifications currently available, PED proposes renewal fees for certifications other than that for the Native American language and culture be \$120. Finally, the fee

for adding an endorsement to an existing license would be increased 26 percent, from \$95 to \$120. See **Attachment 2, Comparison of Current and Proposed Licensure Fees**.

The current rule does not require payment of fees for name or address changes or for replacing lost licenses. The proposed rule would exempt applicants with alternative licenses who meet requirements for transitioning to a standard level one license from certain fees.

Application Procedures. Application procedures in the current rule are spread throughout the specific sections and subsections addressing fees for particular licenses and endorsements. While the proposed rule does not make any substantive changes to these procedures, it does organize them into a single section, Section 8 of 6.60.7 NMAC, Application Fees. That section, like the current rule, would require applicants to submit the appropriate fee for the license for which they are applying, unless multiple applications of the same type are submitted at once, in which case the applicant need only pay a single application fee, although it would be the highest one required. Acceptable methods of payment, either certified check, money order, or other forms acceptable to PED, remain the same under the proposed rule. All application fees remain nonrefundable, as under the current rule, except the proposed rule permits refunds to applicants who PED determines to be indigent. Finally, under the proposed rule, all received application fees are to be deposited in the PED educator licensure fund. While the fund is not mentioned in current rule, it was created in Section 22-8-44 NMSA 1978 of the Public School Finance Act.

The educator licensure fund was created to fund educator background checks, enforce ethics requirements, and process licensure applications. The fund consists of money collected from license application fees. Money in the fund does not revert at the end of the fiscal year.

Standards of Indigence. Currently, the rule requires applicants claiming indigence to supply PED with documentation establishing the applicant neither is, nor was in the previous year, the dependent of another person, and that the required fee represents more than 3 percent of the applicant's total income for the prior year. The proposed rule requires applicants to make requests for determinations of indigence on a PED-approved form to be submitted to PED with a signed statement and supporting documentation within five business days of the licensure application, and the department to review and make a determination within 30 days of the submission. Under the proposed rule, PED may not consider any potential changes to an applicant's income associated with potential licensure, certification, or endorsement when determining indigence. Further, applicants will be presumed indigent if they receive Medicaid, supplemental security income, public assisted housing, Department of Health case management services, or temporary assistance for needy families (TANF). Finally, determinations of indigence remain solely within PED's discretion and are considered final and not subject to further review.

Technical Issues

The proposed rule includes a number of technical issues. First, the rule cites Section 22-10-4 NMSA 1978 as specific statutory authority for the rulemaking, but that section was repealed in 2003. Most likely, the rulemaking was meant to cite Section 22-10A-4 NMSA 1978 of the School Personnel Act as authority. That section addresses licensure levels of teachers and school administrators.

Paragraphs 4 and 5 of Subsection A of Section 10 of 6.60.7 NMAC appear to be duplicative. Paragraph 4 notes that applicants with alternative licenses who meet the requirements to transition their license to a standard level one license are exempt from the corresponding licensure fee. Paragraph 5 indicates that applicants for a standard level one license who already hold an alternative license and who meet the requirements in Part 3 of 6.60 NMAC for transitioning to a standard level one license are exempt from the fee.

Section 7 includes an unnecessary statement, “The applicability of background checks is beyond the scope of this rule.”

There are minor grammatical and punctuation errors in the rule, as well as other examples of redundant language, as follows:

- In Section 8, there are misplaced commas in Subsections A, B, and C.
- Also in Section 8, there are two instances of the redundant language, “submitted together, simultaneously, and at the same time.”
- In Section 11, Subparagraphs (a) through (c) of Paragraph 1 of Subsection A make redundant use of “a request for indigence,” when similar language is already present in the root clause of Paragraph 1.

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TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 60 SCHOOL PERSONNEL - GENERAL PROVISIONS
PART 7 EDUCATOR LICENSURE APPLICATION FEE

6.60.7.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
 [6.60.7.1 NMAC - Rp, 6.60.7.1 NMAC, 8/13/2019]

6.60.7.2 SCOPE: Any and all applicants and applications for obtaining a department license, renewing or advancing a license, certification, and/or license endorsement.
 [6.60.7.2 NMAC - Rp, 6.60.7.2 NMAC, 8/13/2019]

6.60.7.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, 22-8-44, and 22-10A-3 NMSA 1978.
 [6.60.7.3 NMAC - Rp, 6.60.7.3 NMAC, 8/13/2019]

6.60.7.4 DURATION: Permanent.
 [6.60.7.4 NMAC - Rp, 6.60.7.4 NMAC, 8/13/2019]

6.60.7.5 EFFECTIVE DATE: August 13, 2019, unless a later date is specified in rule or a later date is cited in the history note at the end of the section.
 [6.60.7.5 NMAC - Rp, 6.60.7.5 NMAC, 8/13/2019]

6.60.7.6 OBJECTIVE: This rule establishes fees for applicants and applications.
 [6.60.7.6 NMAC - Rp, 6.60.7.6 NMAC, 8/13/2019]

6.60.7.7 DEFINITIONS:

- A. “Applicant”** means a person who has submitted an application or who intends to submit an application to the department.
- B. “Application”** means a formal written request, on a department-approved form, to the department for issuance of a department license, license renewal, license continuation, license advancement, certification, or license endorsement.
- C. “Application fee”** means all fees, monies, remittances, or charges owed for the processing of a department application but does not include any additional fees, monies, or charges owed for the processing of a background check.
- D. “Indigence”** means the financial inability to pay or afford, without extreme hardship, an application fee.
- E. “PDD”** means the professional development dossier defined in 6.69.4.11 NMAC for advancing from a level one to level two license or from a level two to level three license.
- F. “PDD strand”** means one of three categories used to measure evidence of teacher competency on the professional development dossier. Submission of any of the following strands will incur fees:
 - (1) the instruction strand;
 - (2) the student learning strand; and
 - (3) the professional learning strand.

[6.60.7.7 NMAC - Rp, 6.60.7.7 NMAC, 8/13/2019]

6.60.7.8 APPLICATION FEES:

- A. An applicant shall remit an application fee to the department for each application submitted unless multiple licensure applications are submitted simultaneously.**
- B. Should multiple licensure applications be submitted simultaneously, the following shall apply:**
 - (1) only a single application fee shall be incurred; and
 - (2) the highest application fee shall apply.
- C. Application fees must be remitted to the department by money order, certified check, or other forms of payment acceptable to the department.**
- D. Payment, in all forms, must be made to the “New Mexico public education department”.**

E. Unless there has been a determination of indigence, all application fees once submitted, are non-refundable, and shall not be returned to an applicant.

F. The department shall deposit all received application fees in the department educator licensure fund.

[6.60.7.8 NMAC - Rp, 6.60.7.8 NMAC, 8/13/2019]

6.60.7.9 FEE SCHEDULE:

A. Initial licensure applications. Applicants for initial licensure shall pay an application fee of one hundred fifty dollars (\$150) unless another application fee is specified below:

- (1) applicants for initial licensure as an educational assistant shall pay an application fee of fifty dollars (\$50);
- (2) applicants for initial licensure as a school health assistant shall pay an application fee of fifty dollars (\$50);
- (3) applicants for initial licensure as a substitute teacher shall pay an application fee of fifty dollars (\$50);
- (4) applicants for initial licensure as an athletic coach shall pay an application fee of thirty-five dollars (\$35); and
- (5) applicants for initial licensure for Native American language and culture certification shall pay a fee of fifty dollars (\$50).

B. Renewal applications of an existing educator license. Applicants for renewal of an existing educator license shall pay an application fee of one hundred twenty dollars (\$120) unless another application fee is specified below:

- (1) applicants for renewal of an existing educator license as an administrator shall pay an application fee of one hundred thirty dollars (\$130);
- (2) applicants for renewal of an existing educator license as an educational assistant shall pay an application fee of fifty dollars (\$50);
- (3) applicants for renewal of an existing educator license as a school health assistant shall pay an application fee of fifty dollars (\$50); and
- (4) applicants for renewal of an existing educator license as a substitute teacher shall pay an application fee of fifty dollars (\$50).

C. Renewal applications of an existing certification.

- (1) Applicants for renewal of an existing educator certification shall pay a renewal application fee of one hundred twenty dollars (\$120).
- (2) Applicants for renewal of Native American language and culture certification shall pay a fee of fifty dollars (\$50).

D. Advancement applications.

(1) Applicants who have not previously submitted an application for advancement to a higher level of teacher license for the level of license sought shall pay three hundred twenty dollars (\$320).

(2) Applicants who have previously submitted an application for advancement to a higher level of teacher license for the level of license sought shall pay:

- (a) one hundred ten dollars (\$110) for an application that includes one PDD strand;
- (b) two hundred twenty dollars (\$220) for an application that includes two PDD strands; or
- (c) three hundred twenty dollars (\$320) for an application that includes three PDD strands.

(3) Applicants who concurrently submit a renewal of existing educator license application and an advancement application shall pay no renewal of existing application fee.

(4) In order to concurrently submit a renewal of existing educator license application and an advancement application the following must occur:

- (a) the advancement application must be submitted on the same date or before the renewal of an existing educator license application;
- (b) the advancement application fees must be received upon the date of the advancement application submission; and
- (c) the renewal of existing educator license application must be received by the department within five business days of the advancement application.

E. Endorsement applications. Applicants seeking to add an endorsement to an existing license shall

pay a fee of one hundred twenty dollars (\$120).
 [6.60.7.9 NMAC - Rp, 6.60.7.9 NMAC, 8/13/2019]

6.60.7.10 LICENSURE APPLICATION FEE EXEMPTIONS:

A. An application fee shall not be charged for any of the following applications:
 (1) application for name change;
 (2) application for address change;
 (3) application for replacing lost or misplaced licenses; and
 (4) applicants with an alternative license who meet the requirements to transition their license to a standard level one license.

B. An application fee shall not be charged to an individual who qualifies as indigent.

C. An application fee charged to an individual who qualifies as indigent may be returned.
 [6.60.7.10 NMAC - Rp, 6.60.7.10 NMAC, 8/13/2019]

6.60.7.11 STANDARD OF INDIGENCE:

A. An indigence determination shall be made according to the following process:
 (1) The request for indigence:
 (a) shall be made on a form approved by the department;
 (b) shall include any supporting documentation and be submitted to the department within five business days of any application submission; and
 (c) a request for indigence shall include a signed statement, certifying that the licensee is indigent.

(2) The department's review:
 (a) the department shall review and make a determination of indigence within 30 days;
 (b) the determination shall not consider any potential loss or gain of income associated with a department license, renewal, license continuation, license advancement, license, certification, or license endorsement;
 (c) the determination of indigence shall be solely within the discretion of the department; and
 (d) the determination of indigence shall be final and not subject to review.

B. An applicant is presumed indigent if the applicant is a current recipient of one or more of the following:

- (1) medicaid;
- (2) supplemental security income (SSI);
- (3) public assisted housing;
- (4) department of health case management services (DHMS); or
- (5) temporary assistance for needy families (TANF).

[6.60.7.11 NMAC - N, 6.60.7.11 NMAC, 8/13/2019]

HISTORY OF 6.60.7 NMAC: [RESERVED]

6.60.7 NMAC, Educator Licensure Application Fee, filed 10/13/2000, was repealed and replaced by 6.60.7 NMAC, Educator Licensure Application Fee, effective 8/13/2019.

Comparison of Current and Proposed Licensure Fees

License, Certification, or Endorsement	Fee		
	Current	Proposed	Increase
Initial Educator Licensure - General	\$125	\$150	20%
Educator Assistant	\$35	\$50	43%
School Health Assistant	\$35	\$50	43%
Substitute Teacher	\$35	\$50	43%
Athletic Coach	\$35	\$50	43%
Native American Language and Culture ¹	\$35 ¹	\$50	43%
Renewal of Existing Educator Licensure - General	\$95	\$120	26%
As an Administrator ²	No current charge	\$130	n/a
Educator Assistant	\$35	\$50	43%
School Health Assistant	\$35	\$50	43%
Substitute Teacher	\$35	\$50	43%
Renewal of Existing Educator Certification - General	No current charge	\$120	n/a
Native American Language and Culture	\$35 ¹	\$50	43%
Addition of Endorsement to an Existing License	\$95	\$120	26%

Source: PED

¹While not in rule, PED currently charges \$35 for this certification and its renewal.

²PED staff indicate this license should be referred to in the rule simply as an “administrator’s license,” rather than an “educator license as an administrator.”