

Adopted Rule Abstract

1. **Agency:** Public Education Department
2. **Rule Citation and Action:** Sections 6.29.1.9, NMAC, Amend; 6.80.4.20 NMAC, Repeal; 6.80.5 NMAC, New Rule
3. **Register issue and Date of adoption:** Volume 28, Issue 14, July 25, 2017
4. **Effective Date:** July 25, 2017
5. **Specific Legal Authority:** Section 22-5-13 NMSA 1978, Section 22-8B-5.1 NMSA 1978
6. **Purpose of Rule:** Move the authority for approving governing body trainers from the New Mexico Coalition of Charter Schools and the New Mexico School Boards Association to the Public Education Department, open the field of eligible training providers, establish training content and provider qualifications, and mandate training for all charter school governing body members.

Summary of Adopted Rule

The July 25, 2017 issue of the *New Mexico Register* contained the final adoption of new Part 50 of 6.8 NMAC, amendments to Section 9 of Part 6.29.1 NMAC, and the repeal of Section 20 of Part 6.80.4 NMAC. These rules establish requirements and processes for the approval of providers of required training for charter school governing body members in the operational, fiscal, and academic management of charter schools. They mandate training for governing body members, parallel with similar training for local school board members, with differing requirements for new and continuing governing board members. Finally, the rules impose progressive sanctions on charter schools for governing body members' failure to fulfill requirements (see Attachment, Adopted Rules, Sections 6.29.1.9 and 6.80.4.20 NMAC, and Part 6.80.5 NMAC).

Analysis

These rules were adopted with some changes, possibly in response to public comment, and in an effort to conform more closely conform to relevant statute.

Section 6.29.1.9 NMAC, Standards or Excellence, General Provisions, Procedural Requirements. Proposed amendments to this section removed all requirements for training programs for both local school board members and charter school governing body members, except for the basic requirement that each local school board or governing body of a charter school develop a planned training program annually in which each board member is to participate, to assist in the performance

of specified duties. The adopted rule, however, restores all requirements related to local school board members, additionally noting that local school boards are now to review, approve, and support their district's *department-approved* plan. Public comment on a previous version strongly objected to the removal of training requirements for local school board members in the proposed rule.

In the adopted rule, duties parallel to those of local school board members are established for charter school governing body members, including the review of their department-approved improvement plans, the annual development of training for their governing body members, and the annual approval of the school budget.

Section 6.80.4.20 NMAC, Alternative Education – Charter Schools, Charter School Application and Appeal Requirements, Governing Body Training. This section was stricken in its entirety both in the proposed and adopted rules, repealing requirements for the training of both new and continuing charter school governing body members, in favor of moving such requirements to new Part 6.80.5 NMAC.

6.80.5 NMAC, Primary and Secondary Education, Alternative Education – Charter Schools, Charter School Governing Body Training Requirements. PED adopts this new Part of the NMAC to mandate training requirements for members of all charter school governing boards.

Generally Applied Changes from the Rule as Proposed. Throughout the rule, nearly all instances of the word “division” have been replaced with the word “department,” with “division” appearing only where it is appropriate in the Charter Schools Division’s (CSD) capacity as a specific division of PED; the adopted rule clarifies that the responsible party for the administration of these rules is PED, rather than just CSD.

The adopted rule consistently expands periods of time found in the rule in the following manner:

- All periods of five days were expanded to seven days;
- All periods of 10 days were expanded to 14 days; and
- All periods of 15 days were expanded to 21 days.

6.80.5.7 NMAC, Definitions. The adopted rule strikes several defined terms included in the proposed rule: “Day,” “department,” “division,” and “governing body” have all been stricken from the final rule, presumably because they run afoul of the requirements of Laws 2017, Chapter 137 (House Bill 58), which explicitly discourages terms that are already defined in relevant statute from being defined in rule.

The definition for “governing body member” has changed to mean “a member of a governing body of a charter school who will be a voting member upon completion of the initial seven-hour training provided by the department or who has completed the initial seven-hour training and is now a voting member.” This definition reinforces programmatic requirements in the rule that governing body members must complete training before being permitted to act in that capacity.

A new definition for “school specific onboarding” has been added, which means, “the action or process of integrating a new governing body member into the school by familiarizing the new governing body member with the school’s governance structure and requirements, other governing body members, financial status (including budget), history, contract, goals, model, staff, strengths and challenges, and current academic, financial, and organizational performance.”

6.80.5.8 NMAC, Mandatory Governing Body Training Requirements - New Governing Body Members. Changes from the rule as proposed focus on governing board members who have been waived from having to attend the in-person seven-hour initial training course offered by the department due to extraordinary circumstances. Within one month of such a waiver being granted, the member must complete the department’s two-hour virtual training course, at which time they become a fully voting member. This two-hour training counts against the general requirement that new governing body members complete 10 hours of training. The seven-hour in-person course must be completed within 12 months of beginning service as a governing board member.

For those members who do not obtain a waiver and successfully complete the initial seven hours of training, the remaining three hours are to be completed within the first fiscal year of the member’s service on the board.

6.80.5.9 NMAC, Mandatory Governing Body Training Course - Continuing Governing Body Members. Actual training requirements for continuing members are largely unchanged, except that the one hour required training on open government has been expanded to include requirements regarding free public school education. The department now notes that it will provide guidance to identify specific standards in each of the required areas of training (ethics, fiscal requirements, evaluation of academic data, and open government and free public education); however, providers may add other standards in these areas to address the individual needs of governing bodies and their members. As before, charter schools that do well on their report cards and audits may be permitted to forgo portions of training, but the adopted rule now notes the department will identify those schools that are eligible to claim such an exemption for their governing body members annually.

6.80.5.10 NMAC, Governing Body Training Reporting and Compliance. The deadline by which charter schools must report on their members’ attendance and completion of training was moved from July 31 to August 1. While failure to supply this information may lead to sanctions, any disciplinary action from either the department or the school’s authorizer will be based upon the authority of the particular entity. This change, limiting sanctions to the particular authority of the sanctioning entity, appears to address public objection to what might be construed as interference in the contractual relationship between school and authorizer if the department were to impose sanctions of any sort against a charter school.

Potential sanctions against a charter school now address individually noncompliant board members. For example, the costs of implementation of corrective action plans or participation in mandatory training may now be levied against the noncompliant member. The potential suspension of a governing board’s authority, the revocation or non-renewal of a school’s charter, and the withholding of funds by the department (limited in the adopted rule to only 5 percent of monthly funding), may

only be levied against schools that fail to comply with their corrective action plan and also have individually noncompliant members.

6.80.5.11 NMAC, Governing Body Training Provider Approval. In the adopted version of this section, PED added a statement noting that it may approve trainings offered by the department or other state agencies on its own review without requiring the agency to go through the normal application procedure for training provider approval.

In the proposed rule, an application for provider approval would fail substantive review if a proposed facilitator had been a governing body member, administrator, business official, or senior leader of a school that had its board of finance suspended, or charter revoked or not renewed. The adopted rule clarifies that the application will fail in such cases where the proposed facilitator was a governing body member of such a school *during the time of the activity* leading to the school's suspension, revocation, or non-renewal. Where training is to be provided virtually, the proposed rule required the inclusion in the application of "methods to verify participant engagement." The adopted rule, however, requires the inclusion of a "technology description that identifies methods that will be used to verify participant engagement."

6.80.5.12 NMAC, Approved Governing Body Training Reporting Requirements. The deadline for submission of required reports from approved training providers was changed from July 15 to August 1. Elements no longer required in the adopted rule for reports on prior-year training include start and end times of training sessions, the names of the training and the facilitator, the total fees charged and collected for the training, and the training's agenda and course materials. Elements no longer required for reports on training in the upcoming year include end times of training sessions and the names of the training and facilitator.

6.80.5.13 NMAC, Suspension or Revocation of Approval of Governing Body Training. The proposed rule indicated that one of the reasons for which a provider might have its approval revoked was the facilitator having been a governing body member or other school leader at a school that had its board of finance suspended, or charter revoked or not renewed. As in Section 11 of 6.80.5 NMAC, noted above, the adopted version of Section 13 also clarifies that revocation of approval would only lie where the proposed facilitator was a governing board member, business official, administrator, or senior leader at the time of the activity leading to the suspension, revocation, or non-renewal.

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This is an amendment 6.29.1 NMAC, Section 9, effective 7/25/2017.

6.29.1.9 PROCEDURAL REQUIREMENTS:

A. Duties and powers of the local board of education [~~or governing body of a charter school~~]. In addition to the powers and duties set out in Section 22-5-4 NMSA 1978 and Section 22-1-1 et seq. NMSA 1978 of the Public School Code, the local board of education [~~(or governing body of a charter school, where indicated)~~] shall:

(1) review, approve and support the district's EPSS department approved improvement plan and each school site-level EPSS department approved improvement plan, or the charter school's EPSS department approved improvement plan;

(2) employ and evaluate the local superintendent or charter school administrator;

(3) develop a planned program of training annually, in which each member of the board participates, to assist in the performance of specified duties; this planned program shall align with the district's EPSS; training shall include the following requirements and procedures.

(a) All local school board members shall receive a total of five hours of annual training.

(b) Newly elected or appointed local school board members, who are in office for less than a year, shall receive three of the five hours from attending a training course developed by the department and sponsored by the New Mexico school boards association (NMSBA). The additional two hours of annual training for new board members shall consist of sessions sponsored by the NMSBA and approved by the department.

(c) All board members who have been in office for one or more years shall attend five hours of annual training sponsored by the NMSBA and approved by the department.

(d) In order to be credited with attendance at these courses, each attendee shall comply with written attendance procedures established by the department. Prior to September 1 of each year, the NMSBA shall provide each local superintendent with a list of training hours earned annually by each local school board member. The school district's accountability report shall include the names of those local school board members who failed to attend annual mandatory training (see Section 22-2C-11(G) NMSA 1978);

(4) delegate administrative and supervisory functions to the local superintendent or charter school administrator;

(5) refrain from involvement in delegated administrative functions;

(6) review district or charter school policies on an annual basis and revise as needed;

(7) award high school graduation diplomas to students who have successfully completed graduation requirements;

(8) ensure the alignment of district or charter school curricula with New Mexico content standards with benchmarks and performance standards;

(9) ensure that district or charter school funds are appropriately managed and disbursed in accordance with laws, regulations and terms of grants;

(10) approve the annual district or charter school budget;

(11) be responsible for oversight of revenue and expenditures within the district or charter school budget; and

(12) coordinate with the district's superintendent to establish the procedures for discharging and terminating school employees pursuant to Section 22-5-4 NMSA 1978 and the School Personnel Act (Chapter 22, Article 10-A NMSA 1978).

B. Duties and powers of the governing body of a charter school. In addition to the powers and duties set out in Section 22-5-4 NMSA 1978 and Section 22-1-1 et seq. NMSA 1978 of the Public School Code, the governing body of a charter school shall:

(1) review, approve and support the district's department approved improvement plan and each school site-level department approved improvement plan, or the charter school's department approved improvement plan;

(2) employ and evaluate the local superintendent or charter school administrator;

- (3) develop a planned program of training annually, in which each member of the governing body participates, to assist in the performance of specified duties; this planned program shall align with all requirements of statute and any other department regulations;
- (4) delegate administrative and supervisory functions to the local superintendent or charter school administrator;
- (5) refrain from involvement in delegated administrative functions;
- (6) review district or charter school policies on an annual basis and revise as needed;
- (7) award high school graduation diplomas to students who have successfully completed graduation requirements;
- (8) ensure the alignment of district or charter school curricula with New Mexico content standards with benchmarks and performance standards;
- (9) ensure that district or charter school funds are appropriately managed and disbursed in accordance with laws, regulations and terms of grants;
- (10) approve the annual district or charter school budget;
- (11) be responsible for oversight of revenue and expenditures within the district or charter school budget; and
- (12) coordinate with the district's superintendent to establish the procedures for discharging and terminating school employees pursuant to Section 22-5-4 NMSA 1978 and the School Personnel Act (Chapter 22, Article 10-A NMSA 1978).

[B] C. Duties and powers of the district superintendent or the administrator of a charter school. In addition to the powers and duties set out in Section 22-5-14 NMSA 1978 of the Public School Code, the local superintendent (or charter school administrator, where relevant) shall:

- (1) administer local board's (or governing body of a charter school's) policies, state and federal requirements and applicable laws, including the Public School Code;
- (2) be accountable for student achievement; budget management; expenditure of funds; dissemination of information; district or charter school communications; development, implementation and evaluation of the EPSS and all other district or charter school business;
- (3) review, approve and support the district EPSS and each school site-level EPSS or the charter school's EPSS;
- (4) attend all local board or governing body of a charter school's meetings or, when necessary, designate a licensed administrator to attend;
- (5) ensure that school patrons and the public are informed and involved in the acquisition, planning and development of school facilities and that students are provided with adequate facilities which conform to state and federal mandates;
- (6) be accountable for student safety (see 6.12.6 NMAC - *School District Wellness Policy*):
 - (a) ensure that all students are supervised while on school property and while attending or traveling to school events or activities on school-provided transportation;
 - (b) ensure that all buildings, grounds and facilities provide a safe and orderly environment for public use (see Subsection [Ø] P of 6.29.1.9 NMAC - *School Facilities and Grounds*; Paragraph (8) of Subsection D of 6.12.6.8 NMAC - *School District Wellness Policy* and 6.19.3 NMAC - *Unsafe School Choice Option*);
- (7) administer and implement the district's or charter school's approved staff accountability plan and procedures;
- (8) ensure that a process is in place to identify, train, assign and support the use of unlicensed content-area experts as resources in classrooms, team teaching, online instruction, curriculum development and other purposes as determined by the superintendent, which shall include, but not be limited to, the following:
 - (a) establish the specific expertise of the person;
 - (b) obtain a background check and fingerprint records;
 - (c) provide the person with a three-hour training, prior to entering a classroom, about how the school operates, appropriate teaching methods and expectations of principal and assigned teacher;
 - (d) establish a start date and ending date for the person;
 - (e) ensure that the person is under the direct supervision of the teacher assigned when students are present; and
 - (f) provide for an evaluation of services upon completion of the assignment;
- (9) shall issue the following notifications in accordance with Section 22-10A-16 NMSA 1978, in addition to any other parental notification requirements contained in the No Child Left Behind Act of 2001

(PL 107-110, 20 US Code Section 6301 et seq.); a school district or charter school shall issue these notifications in English and, to the extent possible, in the language of the parent or guardian (if it is known that the parent or guardian's primary language is not English); the district or charter school shall retain a copy of all notifications and shall ensure that information required under this paragraph is available to the public upon request.

(a) Within 60 calendar days from the beginning of each school year, a school district or charter school shall issue a notice to parents informing them that they may obtain written information regarding:

- (i) the professional qualifications of their child's teachers, instructional support providers and school principals or charter school administrators;
- (ii) other descriptive information, such as whether their teacher has met all qualifications for licensure for the grade level and subjects being taught;
- (iii) whether their child's teacher is teaching under a teaching or assignment waiver;
- (iv) the teacher's degree major and any other license or graduate degree held by the teacher;
- (v) the qualifications of any instructional support providers that serve their child.

(b) When, by the end of a consecutive four-week period, a child is still being taught by a substitute teacher or a teacher not holding the requisite licensure or licensure endorsement, the school district or charter school shall provide written notice to the parent or guardian that the child is being taught by a substitute teacher or a teacher not holding the requisite licensure or licensure endorsement.

(c) No class may be taught by a substitute teacher, in lieu of a licensed teacher under contract, for more than 45 school days during a school year.

(d) The secretary shall consider deviations from the requirements of Subparagraph (c) of Paragraph (9) of Subsection [B] C of 6.29.1.9 NMAC when a written request by a local superintendent or charter school administrator is submitted. The request shall include:

- (i) the size of the school district;
- (ii) the geographic location of the district;
- (iii) demonstrated efforts to employ an appropriately-licensed person in the area(s) of need;
- (iv) the historical use of substitutes in the district; and
- (v) an estimation of the number of days that a substitute will be utilized

that exceed the 45 day limit.

~~[C.]~~D. Licensed staff and administrators.

(1) The licensed staff shall exercise duties specified in law and those assigned by the local district or charter school.

(2) As required by state and federal law, all licensed staff and administrators shall be evaluated on an annual basis.

(3) The detection and reporting of child abuse or neglect is required by both the Children's Code (32A-4-3 NMSA 1978) and the Public School Code (22-5-4.2 NMSA 1978). Abuse of a child under the Children's Code refers to the physical, sexual, emotional or psychological abuse of a child by a parent, guardian or custodian. According to the Children's Code, failure to report abuse or neglect of a child is a misdemeanor. The terms "abuse" and "neglect" are defined in detail in Section 32A-4-2 NMSA 1978 of the Children's Code. There is also the crime of child abuse, which consists of anyone who knowingly, intentionally, negligently or without cause, causes or permits a child to be placed in a situation of endangerment to the child's life or health, torturing or cruelly confining a child, or exposing a child to the inclemency of weather. To address the detection and reporting of child abuse or neglect in public schools:

(a) school districts and charter schools shall adopt written policies that establish a process for the coordination and internal tracking of child abuse or neglect reports made by district personnel;

(b) school districts and charter schools shall include in their policies a requirement that all personnel shall immediately report suspected child abuse or neglect to either a law enforcement agency, the New Mexico children, youth and families department, or a tribal law enforcement or social services agency for any Indian child residing on tribal land;

(c) school districts and charter schools shall not require their personnel to first report to or notify designated school personnel or go through their chain of command before making the mandatory report described in Subparagraph (a) of Paragraph (3) of Subsection [C] D of 6.29.1.9 NMAC;

(d) no school district or charter school shall adopt a policy that relieves any personnel of their duty to report suspected child abuse or neglect;

(e) school personnel detecting suspected child abuse or neglect, including the suspected crime of child abuse, shall immediately - i.e., the same day - report their observations to one of the offices designated in Subparagraph (b) of Paragraph (3) of Subsection [C] D of 6.29.1.9 NMAC;

(f) all licensed school personnel, including substitute teachers, educational assistants, school nurses, school counselors, school psychologists and other instructional service providers shall complete training provided by the department in the detection and reporting of child abuse or neglect, within their first year of employment by, or providing services to, a school district or charter school;

(g) all persons who have never received training required under Subparagraph (f) of Paragraph (3) of Subsection [C] D of 6.29.1.9 NMAC shall make arrangements to receive training before the end of their current school year;

(h) the department shall develop a training program to detect child abuse or neglect, in coordination with the New Mexico human services department and the New Mexico department of health. This program shall be made available to all colleges, school districts and charter schools in the state offering teacher preparation courses;

(i) nothing in Paragraph (3) of Subsection [C] D of 6.29.1.9 NMAC shall be interpreted as preventing a school district or charter school from developing and providing its own training for all staff to detect and report suspected child abuse or neglect, in addition to the training offered by the department.

[D-]E. Student intervention system. The school and district shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior.

(1) In tier 1, the school and district shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status and academic levels of proficiency has been completed for each student enrolled. If data from universal screening, a referral from a parent, a school staff member or other information available to a school or district suggests that a particular student needs educational support for learning or behavior, then the student shall be referred to the SAT for consideration of interventions at the tier 2 level.

(2) In tier 2, a properly-constituted SAT at each school, which includes the student's parents and the student (as appropriate), shall conduct the student study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing curriculum-based measures. As part of the child study process, the SAT shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties. The SAT shall create no undue delay for full initial evaluation to determine eligibility for special education for a student who is identified as homeless or in foster care under the state's foster care system or based on criteria to assess housing stability status under the federal McKinney-Vento Act and the 2015 ESSA Title IV, Part B, due to the high mobility of this specific population group. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis, which may include a referral for a full, initial evaluation to determine possible eligibility for special education and related services consistent with the requirements of Subsections D-F of 6.31.2.10 NMAC and federal regulations at 34 CFR Sec. 300.300.

(3) In tier 3, a student has been identified as a student with disability or gifted under the state criteria for giftedness deemed eligible for special education and related services, and an IEP is developed by a properly-constituted IEP team, pursuant to Subsection B of 6.31.2.11 NMAC and federal regulations at 34 CFR Sec. 300.321.

(4) The department's manual, *the student assistance team and the three-tier model of student intervention*, shall be the guiding document for schools and districts to use in implementing the student intervention system.

[E-]F. Records and reports.

(1) Each district and charter school shall maintain and treat all personally identifiable educational records in accordance with the Family Educational Rights and Privacy Act (FERPA), the implementing regulations set forth at 34 Code of Federal Regulations, Part 99 and Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978.

(2) All records shall be safe from fire and theft and stored in a retrievable manner. All student records, including disciplinary and grading records, shall be retained and disposed of pursuant to 1.20.2 NMAC.

(3) Transcripts and copies of pertinent records of students transferring from one school to another, including disciplinary records with respect to suspension and expulsion, shall be forwarded promptly upon written request by the receiving school.

(4) Local school boards and governing bodies of charter schools shall establish policies providing for inspection of education records by students and parents.

(5) Effective July 1, 2009, after the administration of the eleventh grade SBA, school districts and charter schools are required to record test results on each student's official transcript. The information recorded shall include the following:

- (a) district and high school administering the examination;
- (b) date of examination administration;
- (c) results of the examination for each subject area tested; and
- (d) reports of the results in a format and language that is understandable to parents.

[F.]G. Organization of grade levels and establishing/closing schools. Any change in a school district or charter school's organizational pattern, including the establishment or closing of a school, shall have the secretary's approval prior to implementation. Requests for change shall be submitted using the department's *organization of grade levels and establishing/closing school waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. The waiver request shall outline the expected educational benefits.

[G.]H. Class loads. Class loads shall be in compliance with the most current class load requirements in Section 22-10A-20 NMSA 1978 and Section 22-5-15 NMSA 1978.

(1) The individual class load for elementary school teachers shall not exceed 20 students for kindergarten, provided that any teacher in kindergarten with a class load of 15 to 20 students shall be entitled to the assistance of an educational assistant.

(2) The average class load for elementary school teachers at an individual school shall not exceed 22 students when averaged among grades one, two and three, provided that any teacher in grade one with a class load of 21 or more shall be entitled to the full-time assistance of an educational assistant.

(3) The average class load for an elementary school teacher at an individual school shall not exceed 24 students when averaged among grades four, five and six.

(4) The daily teaching load per teacher for grades seven through twelve shall not exceed 160 students, except the daily teaching load for teachers of required English courses in grades seven and eight shall not exceed 135, with a maximum of 27 students per class; and the daily teaching load for teachers of required English courses in grades nine through twelve shall not exceed 150 students, with a maximum of 30 students per class. The teaching load for teachers assigned to laboratories and shops shall adhere to the current workplace safety codes of the industry.

(5) Students receiving special education services integrated into a regular classroom for any part of the day shall be counted in the calculation of class load averages. Students receiving special education services not integrated into the regular classroom shall not be counted in the calculation of class load averages. Only classroom teachers charged with responsibility for the regular classroom instructional program shall be counted in determining average class loads. In elementary schools offering only one grade level, average class loads may be calculated by averaging appropriate grade levels between schools in the school district.

(6) The secretary may waive the individual school class load requirements established in this section. Waivers shall be applied for annually, and a waiver shall not be granted for more than two consecutive years. Requests for class load waivers shall be submitted using the department's *class size waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. Waivers may only be granted if a school district or charter school demonstrates:

- (a) no portable classrooms are available;
- (b) no other available sources of funding exist to meet the need for additional classrooms;
- (c) the district or charter school is planning alternatives to increase building capacity for implementation within one year; and
- (d) the parents of all children affected by the waiver have been notified in writing of the statutory class load requirements; that the school district or charter school has made a decision to deviate from

these class load requirements; and of the school district's or charter school's plan to achieve compliance with the class load requirements.

(7) If a waiver is granted pursuant to Paragraph (6) of Subsection [G] H of 6.29.1.9 NMAC to an individual school, the average class load for elementary school teachers at that school shall not exceed 20 students in kindergarten and grade one, and shall not exceed 25 students when averaged among grades two, three, four, five and six.

(8) Each school district or charter school shall report to the department the size and composition of classes subsequent to the 40th day report and the December 1 count. Failure to meet class load requirements within two years shall be justification for the disapproval of the school district's or charter school's budget by the secretary.

(9) The department shall report to the legislative education study committee by November 30 of each year regarding each school district's or charter school's ability to meet class load requirements imposed by law.

(10) Notwithstanding the provisions of Paragraph (6) of Subsection [G] H of 6.29.1.9 NMAC, the secretary may waive the individual class load and teaching load requirements established in this section upon demonstration of a viable alternative curricular plan and a finding by the department that the plan is in the best interest of the school district or charter school; and that, on an annual basis, the plan has been presented to and is supported by the affected teaching staff. The department shall evaluate the impact of each alternative curricular plan annually. Annual reports shall be made to the legislative education study committee. Requests for alternative curricular plans shall be submitted using the department's *collaborative school improvement programs waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request.

[H.]I. Student/staff caseloads in gifted and special education.

(1) The student/staff caseload shall not exceed 35:1 for a special education teacher and 60:1 for a speech-language pathologist for special education services or speech-only services, in which properly licensed special education teachers or speech-language pathologists travel from class to class or school to school, providing services to students with disabilities whose individualized education programs (IEPs) require a minimal amount of special education. (A minimal amount of special education services shall not exceed 10 percent of the school day/week.)

(2) The student/staff caseload shall not exceed 24:1 for a special education teacher and 35:1 for a speech-language pathologist for special education services or speech-only services which properly-licensed special education teachers or speech-language pathologists provide to students with disabilities whose IEPs require a moderate amount of special education. (A moderate amount of special education services shall be less than 50 percent of the school day.)

(3) The student/staff caseload shall not exceed 15:1 for special education services in which properly licensed special education teachers provide services to students with disabilities whose IEPs require an extensive amount of special education for a portion of the school day as appropriate to implement the plan. (An extensive amount of special education services shall be provided 50 percent or more of the school day.)

(4) The student/staff caseload shall not exceed 8:1 for special education services in which a properly licensed professional provides services to students with disabilities whose IEPs require a maximum amount of special education. (A maximum amount of special education services shall be provided in an amount approaching a full school day.)

(5) The student/adult caseload shall not exceed 4:1 for center-based special education services in which one of the adults in the program is a properly licensed professional providing three- and four-year old children with the amount of special education needed to implement each child's IEP.

(6) The student/adult caseload shall not exceed 2:1 for center-based special education services in which three- and four-year old children have profound educational needs.

(7) Adequate student/staff caseloads shall be provided to appropriately address needs identified in the IEPs. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with applicable department licensure rules or written department policy may be used to assist in the provision of special education and related services to students with disabilities under Part B of IDEA.

(8) If the student/staff caseload ratio exceeds the standards provided above, a request for waiver shall be submitted to the department for review and approval by the secretary.

[I.]J. Length of school day and year.

(1) The district or charter school shall be in compliance with length of school day and year requirements as defined in Section 22-2-8.1 NMSA 1978. Within statutory requirements, the local board or governing body of a charter school determines the length of the school year, which includes equivalent hours. The local board or governing body of a charter school may delegate this authority to the superintendent or charter school administrator who, in turn, may delegate to others.

(2) Time for home visits/parent-teacher conferences. The local board or governing body of a charter school may designate a prescribed number of hours within the school year for home visits, to develop next-step plans for students or parent-teacher conferences up to the following maximum hours: kindergarten: 33 hours; grades 1 through 6: 22 hours; and grades 7 through 12: 12 hours.

(3) All students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(a) kindergarten, for half-day programs: two and one-half (2 and 1/2) hours per day or 450 hours per year; or, for full-day programs: five and one-half (5 and 1/2) hours per day or 990 hours per year;

(b) grades one through six: five and one-half (5 and 1/2) hours per day or 990 hours per year; and

(c) grades seven through twelve: six hours per day or 1,080 hours per year.

(4) Testing and assessments are considered part of instructional hours. One group of students cannot be dismissed while another group of students is testing, unless the students being dismissed already have approved extended-day plans in place for participating in the minimum instructional hours required.

(5) Dismissing students or closing school for staff development and participation in other non-instructional activities does not count toward the minimum instructional hours required. This time is to be built into a district and school schedule as an add-on. Early-release days may be built into a district or charter school calendar when the minimum instructional hours' requirement is otherwise being met.

(6) The student lunch period each day shall be at least 30 minutes. Lunch recess shall not be counted as part of the instructional day.

(7) Districts or charter schools may request a waiver from the secretary if the minimum length of school day requirement creates an undue hardship. Such requests shall be submitted using the department's *instructional hours waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and rationale for request. Requests shall provide documentation that the following conditions exist:

(a) the educational, societal or fiscal consequences of operating the minimum length of a school day/year significantly impede the district's ability to provide a quality educational program; and

(b) the district or charter school has thoroughly investigated alternatives other than shortening the length of a school day/year in order to address the identified concerns.

(8) When an emergency arises and the emergency affects the required hours, the local superintendent or charter school administrator shall request in writing approval from the secretary regarding the manner in which the lost instructional hours will be made up, or requesting an exemption from the required instructional hours.

[J-K]. Graduation requirements.

(1) The New Mexico eleventh grade SBA. The district or charter school shall be in compliance with requirements as specified in Section 22-13-1.1 NMSA 1978 and Subsection L of Section 66-7-506 NMSA 1978 (offering driver education, service learning and financial literacy as electives). The department specifies that students shall meet all graduation requirements in order to be eligible to receive a diploma. This includes the requirement of passing the eleventh grade SBA.

(2) The next step plan. Each student shall complete a next step plan for each high school year. For students with individualized education programs (IEPs), the transition plan substitutes for the next step plan. The next step plan requires that:

(a) each grade-level next step plan shall be completed within the last 60 school days of the preceding school year (for example, the 9th grade interim next step plan shall be made before the end of the 8th grade year);

(b) only one grade-level next step plan shall be completed for a student each year;

(c) the development of the next step plan shall include the student, the student's parent or guardian and the advisor, but may include additional relevant parties;

(d) to write the next step plan, the advisor shall consult with the student and the student's parent or guardian on academic choices that target the student's interests and meet graduation requirements;

(e) the next step plan shall address career clusters in career and technical education, academic support and study skills, extracurricular experiences and out-of-school activities, exposure to post-secondary education and career options, family and social supports, assessments, credentials and any other relevant information; as part of the next step plan, the advisor shall disseminate and share information concerning advanced placement, honors, dual-credit and distance learning programs;

(f) the next step plan determines whether or not the student is on track with graduation requirements; the plan ensures that gaps in courses and test-taking are filled;

(g) the next step plan may be made in large-group, small-group or individual student settings;

(h) the advisor has the responsibility to see that the student is reasonably informed about curricular and course options, opportunities available that lead to broader post-high school options, and alternative opportunities available if the student does not finish a planned curriculum;

(i) the next step plan shall be signed by the student, the student's parent or guardian and the advisor;

(j) the completed next step plan shall be filed with the school principal or charter school administrator and only the final next step plan shall be filed in the student's cumulative file upon graduation;

(k) during the development of the student's next step plan for the eleventh grade and no later than the spring of the tenth grade, a plan allowing the student to complete a fourth mathematics course other than algebra 2 may be developed using data from the student's high school short-cycle assessments, the student's most recent SBA score in mathematics, other relevant assessment scores and coursework grades and educational career plans recorded in the student's next step plan;

(l) for the student to take four mathematics courses that contain a lesser content than that recommended for inclusion in algebra 2 or its equivalent, the student's parent shall provide written, signed permission on the student's next step plan; parental signature on the next step plan for the eleventh grade indicating the mathematics courses the student will take shall serve as the required signed permission.

(3) Transfer of credits. For students enrolling or re-enrolling in public schools, local school boards or governing bodies of charter schools will establish policies as follows.

(a) Credits shall be transferable with no loss of value between schools that are accredited by a state board of education in the United States, United States territories, Puerto Rico, the freely-associated states and outlying areas of the United States, department of defense schools or other authorized body.

(b) Policies of the local school board or the governing body of a charter school, for students transferring from home schools, private schools or foreign schools to the public schools, will be in accordance with Subsection D of Section 22-1-4 NMSA 1978.

(c) Acceptance of credits earned through correspondence extension study, foreign study, home study courses or non-department accredited, non-public schools is determined by the policy of the local school board or the governing body of a charter school.

(4) Correspondence courses. For students currently enrolled in public schools, local school boards or governing bodies of charter schools will establish policies addressing the use of correspondence courses to meet graduation requirements.

(a) Policies should be based on the following circumstances:

(i) when road conditions or distance from access to school transportation prohibit regular daily attendance;

(ii) when a student cannot attend school due to prolonged illness or recovery from injury, as part of the individual plan to address the student's educational needs developed in accordance with applicable state and federal regulations governing the education of students with disabilities;

(iii) when the occupation of the parent or student requires prolonged periods of time away from the school district;

(iv) when a student is housed in a long-term residential facility; or

(v) to enhance or supplement graduation requirements based on a student's individual need(s).

(b) Schools counting credit for correspondence courses for enrolled students shall ensure that such courses are part of the student's individual plan for graduation. If applicable, such courses are part of the IEP developed in accordance with applicable state and federal regulations governing the education of students

with disabilities, and schools shall ensure that assistance is available to students as needed to complete the correspondence courses.

(c) Correspondence courses used to provide graduation credit to currently enrolled students shall be provided by:

- (i) a school accredited by the state board of education of the state in which the school is located, or
- (ii) a college or university with regional accreditation to perform such function.

(5) Dual credit program. "Dual credit program" means a program that allows high school students to enroll in college-level courses offered by public post-secondary educational institutions that may be academic or career-technical in nature, but may not be remedial or developmental, and through which students can simultaneously earn credit toward high school graduation and a post-secondary degree or certificate. (Refer to 6.30.7.6 NMAC.)

(6) Distance learning courses. "Distance learning" means the technology and the educational process used to provide instruction for credit or for a grade, when the course provider and the distance-learning student are not necessarily physically present at the same time or place. Distance learning does not include educational software that utilizes only on-site teaching. Any program involving distance learning shall be governed by the department's distance learning rule, found at 6.30.8 NMAC.

(7) Standardized grading system. A standardized grading system is required to be implemented by each district and charter school. The system shall include the following components:

- (a) a written report to parents regarding the performance of their children tested with the New Mexico standards-based assessments;
- (b) for grades 3-12, a standardized alphabetic grading system, based on the 4.0 scale (i.e., a minimum of 4.0 or higher=A, 3.0=B, 2.0=C, 1.0=D); certain courses may be assigned a weighted score according to local policy;
- (c) alignment of all district and school curriculum to the New Mexico content standards with benchmarks and performance standards; and
- (d) all school report cards shall include the results of standards-based assessments and may augment the standardized grading system with a narrative or other method that measures a student's academic, social, behavioral or other skills.

(8) Final examination. A final examination shall be administered to all students in all courses offered for credit.

(9) Credit. Credit cannot be earned twice for the same course.

(10) Other elective credit. Elective credit courses shall meet all New Mexico content standards with benchmarks and performance standards, and shall:

- (a) include a written, sequential curriculum;
- (b) be taught by an instructor who is appropriately licensed and endorsed to teach the course;
- (c) include a final examination; and
- (d) be reviewed and approved by the local board of education or governing body of a charter school.

(11) Alternative credit. Local districts, charter schools or state educational institutions may design elective courses, known as alternative credit courses, to satisfy any of the specified credits required for graduation.

- (a) The process includes:
 - (i) review of the licensure and endorsements of affected staff;
 - (ii) review of required course content standards with benchmarks and performance standards with the proposed elective course, and summary of alignment between the two courses;
 - (iii) determination of the amount of credit that will be generated;
 - (iv) publication of information regarding what course is available for alternative credit and identification of STARS course number;
 - (v) inclusion of the availability of alternative credit in all next-step plans;
 - (vi) note on the student transcript that the graduation requirement course was completed using the named alternative credit course;
 - (vii) review and preliminary approval by the local board of education or governing body of a charter school.

(b) Once the process has been completed, the district superintendent or administrator of a charter school or state educational institution shall submit a written request, with appropriate documentation, to the secretary for approval.

(12) Excuses from physical education. The physical education graduation requirement may be waived by the secretary, based upon a request by the local superintendent or charter school administrator with documentation from a licensed medical doctor, osteopath, certified nurse practitioner with prescriptive authority or chiropractor, that the student has a permanent or chronic condition that does not permit physical activity. Such requests shall be submitted using the department's *physical education waiver request form*. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; local board policy requirement and approval, if required; date of board approval; statement of applicable district or charter school policy and, for each student for whom the waiver is requested: name, school and year of student graduation, district affirmation that it possesses required medical documentation, name and email address of school principal and rationale for the request. A student receiving special education supports and services pursuant to the IDEA or Section 504 of the federal Rehabilitation Act may also be eligible to request this waiver, when appropriate medical documentation is provided in the IEP.

(13) Graduation requirements for issuance of a conditional certificate of transition for students with an IEP. The development of a program of study and the granting of a diploma, or use of a conditional certificate of transition in the form of a continuing or transition individualized educational program (IEP) for students receiving special education services, includes the following governing principles:

(a) The IEP team is responsible for determining whether the student has completed a planned program of study based on the student's strengths, interests, preferences, identified educational and functional needs and long-term educational or occupational goals, making the student eligible to receive either a diploma or a conditional certificate of transition. A conditional certificate of transition allows the student to participate in graduation activities. If a student receives a conditional certificate of transition, the student shall then return to the program specified in the IEP to complete the student's secondary program and meet the requirements for a diploma. In addition, all IEPs shall provide a description of how the student's progress toward meeting annual goals and graduation requirements will be measured, and at what intervals progress will be reported to parents or guardians. A student shall be awarded a diploma upon completion of a planned program of study that meets the requirements of paragraph (b).

(b) A student may be awarded a diploma (Section 22-13-1.1 NMSA 1978) using any of the following programs of study described in (i) through (iii). All IEP team discussion points and decisions identified herein, including the identification of the student's program of study and any student or parent proposals accepted or rejected by the IEP team (if the student has not reached the age of majority), shall be documented on the student's IEP and in the prior written notice (PWN) of proposed action.

(i) A standard program of study is based upon meeting or exceeding all requirements for graduation based on the New Mexico standards for excellence (Subsection [F] K of 6.29.1.9 NMAC) with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall pass all sections of the current state graduation examination(s) administered pursuant to Section 22-13-1.1(I) NMSA 1978 under standard administration or with state-approved accommodations, and shall meet all other standard graduation requirements of the district.

(ii) A career readiness alternative program of study is developed to provide relevance and is based on a student's career interest as it relates to one of the career clusters, with or without reasonable accommodations of delivery and assessment methods. In addition, a student shall take the current state graduation examination(s) administered pursuant to Subsection K of Section 22-13-1.1 NMSA 1978, under standard administration or with state-approved accommodations as determined by the SEA. Once the student has attempted the state graduation examination and is unable to meet the minimum requirements on all sections of the assessments and achieve a level of competency, the IEP team can set the minimum passing scores. The student shall earn at least the minimum number of credits required by the district or charter school for graduation through standard or alternative courses that address the employability and career development standards with benchmarks and performance standards, as determined by the IEP team. Course work shall include a minimum of four units of career development opportunities and learning experiences that may include any of the following: career readiness and vocational course work, work experience, community-based instruction, student service learning, job shadowing, mentoring or entrepreneurships related to the student's occupational choices. Credits for work experience shall be related to the program of study that the school offers and specific to the district's ability to offer work experience or community-based instruction credits. The student shall achieve competency in all areas of the employability and career development standards with benchmarks and performance standards, as determined by the

IEP team and the student's interest as it relates to the career clusters. The program of study shall address the New Mexico content standards with benchmarks and performance standards in other subject areas as appropriate.

(iii) An ability program of study was developed for students who have a significant cognitive disability or severe mental health issues. The IEP goals and functional curriculum course work shall be based on the New Mexico standards with benchmarks and performance standards and employability and career development standards with benchmarks and performance standards. Students in this program of study shall earn the minimum number of credits or be provided equivalent educational opportunities required by the district or charter school, with course work individualized to meet the unique needs of the student through support of the IEP. In addition, a student shall take either the current state graduation examination(s) administered pursuant to Subsection K of Section 22-13-1.1 NMSA 1978, under standard administration or with state-approved accommodations, or the state-approved alternate assessment. The student shall achieve a level of competency pre-determined by the student's IEP team on the current graduation examination or the state-approved alternate assessment, and meet all other graduation requirements established by the IEP team.

(c) The new requirements for the career readiness and ability pathways become effective beginning with students graduating in 2009.

(d) By the end of the eighth grade, each student's IEP shall contain a proposed individual program of study for grades nine through twelve. The program of study shall identify by name all course options the student may take and shall align with the student's long-range measurable post-secondary goals and transition services to facilitate a smooth transition to high school and beyond. This program of study shall be reviewed on an annual basis and adjusted to address the student's strengths, interests, preferences and areas of identified educational and functional needs. The IEP team shall document on the IEP the student's progress toward earning required graduation credits and passing the current graduation examination.

(e) A district or charter school shall provide each student, who has an IEP and who graduates or reaches the maximum age for special education services, a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting post-secondary goals.

(f) Students graduating on the standard program of study shall meet the state's minimum requirements on all sections of the graduation examination. IEP teams shall document a plan of action on the IEP and the PWN to be carried out by both the student and the district or charter school, to ensure that the student will pass all sections of the graduation examination.

(g) To establish a level of proficiency on the current graduation examination or the state-approved alternate assessment for students on a career readiness program of study or ability program of study, IEP teams shall review the student's performance on the first attempt, and establish a targeted proficiency on all sections that are below the state's minimum requirement. For those students who meet participation criteria for the New Mexico alternate assessment, IEP teams shall set targeted levels of proficiency based upon previous performance on the test. If the student has previously been administered the New Mexico alternate assessment and has achieved an advanced level of overall performance, the IEP team shall arrange for the student to participate in the general graduation examination, and shall identify appropriate accommodations that the student may require. IEP teams shall document the targeted levels of proficiency on the IEP and the PWN, outlining the plan of action to be taken by both the student and the district or charter school to ensure that the student will meet the targeted levels of proficiency. Districts or charter schools may submit a written request for a waiver to the secretary in cases where a student has medical or mental health issues that may result in regression or that negatively influence the student's ability to achieve targeted levels of proficiency. The written request shall be signed by the superintendent or charter school administrator and shall include documentation of the medical or mental health issues.

(h) Changes in programs of study.

(i) Departures from the standard program of study for students receiving special education services and supports shall be considered in the order of the options listed in Subparagraph (b) of Paragraph (13) of Subsection [F] K of 6.29.1.9 NMAC. Any modified program of study may depart from a standard program of study only so far as is necessary to meet an individual student's educational needs as determined by the IEP team. Districts and charter schools are obligated to meet the requirements of IDEA to provide students with IEPs on any one of the three programs of study, and access to the general curriculum in the least restrictive environment. When an alternative program of study is developed, a building administrator or designee who has knowledge about the student shall be a member of the IEP team

(ii) Districts and charter schools shall document changes from the standard program of study on the PWN. IEP teams shall identify the reasons for changing the student's program of study, shall provide parents with clear concise explanations of the career readiness or ability programs of study, shall notify

parents and students of the potential consequences that may limit the student's post-secondary options, and shall make required changes to the IEP and course of study, to ensure that the student meets the requirements of that program of study.

(iii) The IEP team shall not change the program of study for a student entering the final year of high school (not the cohort with which the student entered high school) from the standard program of study to the career readiness program of study, nor from the career readiness program of study to the ability program of study, after the 20th school day of the final year of high school. IEP teams may change a student's program of study from the ability program of study to the career readiness program of study, or from the career readiness program of study to the standard program of study, if the student meets the graduation requirements of that program of study and if the change is made and documented appropriately in a revised IEP and PWN by a properly constituted IEP team in a properly convened meeting.

(i) A student who receives special education services may be granted a conditional certificate of transition in the form of a continuing or transition IEP when:

(i) the IEP team provides sufficient documentation and justification that the issuance of a conditional certificate of transition for an individual student is warranted;

(ii) prior to the student's projected graduation date, the IEP team provides a PWN stating that the student will receive a conditional certificate of transition;

(iii) the district or charter school ensures that a conditional certificate of transition is not a program of study and does not end the student's right to a FAPE;

(iv) the district or charter school ensures that a conditional certificate of transition entitles a student who has attended four years or more of high school to participate in graduation activities, and requires that the student continue receiving special education supports and services needed to obtain the high school diploma;

(v) the district or charter school ensures that, prior to receiving a conditional certificate of transition, the student has a continuing or transition IEP;

(vi) the student's continuing or transition IEP outlines measures, resources and specific responsibilities for both the student and the district or charter school to ensure that the student receives a diploma.

(j) A student who does not return to complete the program of study as outlined in the continuing or transition IEP will be considered as a dropout.

(k) A student who receives a conditional certificate of transition is eligible to continue receiving special education services until receipt of a diploma or until the end of the academic year in which the student becomes 22 years of age.

(l) Graduation plans shall be a part of all IEPs:

(i) by the end of eighth grade, or by the time the student turns 14 years of age, and concurrent with the development of the student's transition plan in accordance with federal regulations at 34 CFR 300.320;

(ii) when a student returns to a school after an extended absence, and if an IEP program of study may have been developed but needs to be reviewed; or

(iii) when evaluations warrant the need for a modified program of study at any time after development of an initial graduation plan.

(m) Graduation plans shall be a part of all of all IEPs and annual reviews, and shall follow the student in all educational settings. Receiving institutions that fall under the department's jurisdiction will recognize these graduation plans, subject to revision by new IEP teams, if appropriate to meet a student's changing needs.

(n) At the exit IEP meeting, the team shall review the student's transition plan, and shall confirm and document that all state and district requirements for graduation under the final IEP have been satisfied. A building administrator who has knowledge about the student shall be a member of this team, and shall sign specifically to verify and accept completed graduation plans, goals and objectives pursuant to (i) - (iii) of Subparagraph (b) of Paragraph (13) of Subsection [J] K of 6.29.1.9 NMAC, or plans for a conditional certificate of transition with a continuing or transition IEP, pursuant to Subparagraph (i) of Paragraph (13) of Subsection [J] K of 6.29.1.9 NMAC. The IEP team shall ensure that the student has current and relevant evaluations, reports or other documentation necessary to support a smooth and effective transition to post-secondary services for a student who will graduate on one of the three programs of study. The school shall arrange for any necessary information to be provided at no cost to the students or parents. The school shall submit a list of students who will receive the diploma through a career readiness or ability program of study to the local superintendent or charter school

administrator, using the students' identification numbers. This list shall be totaled and submitted to the local school board or governing body of a charter school. This information shall be treated as confidential in accordance with the FERPA.

(o) Students eligible for special education services are entitled to a FAPE through age 21. If a student turns 22 during the school year, the student shall be allowed to complete the school year. If a student becomes 22 prior to the first day of the school year, the student is no longer eligible to receive special education services.

(p) The receipt of a diploma terminates the service eligibility of students with special education needs.

(q) All diplomas awarded by a school district or charter school shall be identical in appearance, content and effect, except that symbols or notations may be added to individual students' diplomas to reflect official school honors or awards earned by students.

(14) Future changes in graduation requirements. Refer to 6.29.1.13 NMAC.

~~[K.]~~ L. Statewide accountability program.

(1) Educational accountability. The local board of education or charter school governing body and the district superintendent or charter school administrator are responsible for providing educational services that support student learning. Educational accountability has two mechanisms and three indicators which impact the approval of the district's budget and accreditation status. The accountability mechanisms are accreditation and the program/budget review process. These two mechanisms shall align directly with the district or charter school's EPSS. The indicators are community representation, local accountability indicators and statewide accountability indicators.

(2) Accountability mechanisms.

(a) Accreditation. Accreditation will be conducted in accordance with Subsection F of Section 22-2-2 NMSA 1978. Verification of the district or charter school's EPSS and student progress will occur on a regular basis. State and federal regulations which fall within the scope of accreditation will also be monitored.

(b) Program/budget review and approval. The program/budget review and approval process, including assessment and evaluation, occurs annually. Its purpose is to link the district or charter school's program needs directly with budgetary resources. In order for a district or charter school to obtain an approved budget, the district shall:

(i) document the local board or charter school governing body's determination of needs as defined in its EPSS (Section 22-8-18 NMSA 1978);

(ii) document minimum budget requirements (Section 22-8-9 NMSA 1978);

(iii) document parent involvement in budget preparation (Section 22-8-11 NMSA 1978);

(iv) complete the annual program/budget questionnaire; and

(v) comply with requirements specified in Section 22-8-5 NMSA 1978.

(3) Accountability indicators.

(a) Community representation. Community representatives shall be involved in the budget preparation process, the EPSS process, the EPSS evaluation (including the establishment of local student performance indicators) and the accreditation process. Community representatives include parents, students and other community members who reflect the composition of the student population. Evidence shall be provided to verify different forms of representation.

(b) Local student performance indicators. Local student performance indicators shall:

(i) be identified by the local school district or charter school in conjunction with students, parents, community members and businesses;

(ii) be part of the local EPSS evaluation;

(iii) measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;

(iv) demonstrate student progress toward identified EPSS goals/focus areas (performance indicators);

(v) be included as an integral part of the accreditation and program/budget review processes; and

(vi) use any other indicators the district or charter school shall choose for its students.

(c) Statewide student performance indicators. Statewide student performance indicators shall:

- (i) be included as an integral part of the accreditation and program/budget review processes;
- (ii) be part of the local EPSS evaluation;
- (iii) measure and demonstrate student progress toward the New Mexico content standards with benchmarks and performance standards;
- (iv) communicate clearly to parents and the general public the students' progress toward meeting the goals established by the district and school, or charter school; and
- (v) describe performance levels across the grade levels and across the curriculum.

~~[L-]~~M. Statewide student assessment system. As stated in 22-2-8.13 NMSA 1978, students' knowledge and skills are assessed and evaluated through the New Mexico content standards with benchmarks and performance standards, the New Mexico standards-based assessments (SBA) and local measures. All public schools, state educational institutions and educational programs conducted in state institutions other than New Mexico military institute, as noted in the scope of this rule, shall participate in the statewide student assessment system.

(1) The statewide student assessment system. All public school students, with the exceptions indicated below, shall participate in the SBA, which includes standards-based assessments in grades 3 through 8 and grade 11 and other tests, including short-cycle assessments in grades 9 and 10.

(2) Exceptions. Exceptions include special provisions and requirements for the assessment of English language learners and students with IEPs.

(a) English language learners. Students who have limited English language skills (i.e., students who are "English language learners" as determined by the department's language assessment instrument (the New Mexico English language proficiency assessment - NMELPA)) shall participate in the statewide testing program. The following considerations specify how assessment shall be conducted.

(i) Length of enrollment in U.S. schools. The options for participation of English language learners in the New Mexico standards-based assessment program depend on the length of time that the student has been enrolled in U. S. public schools. For students who are new to U.S. schools, the following applies: If the student has not been in the school for a full academic year at the time of testing, the student's test results will not be included in the performance data used to determine the AYP of the school. Students who are enrolled for the first year in a U.S. school may receive a language exemption from the SBA for the reading subtest only. In this situation, the student's score on the NMELPA, if available, will be substituted for the reading subtest and will count toward the district or school's required 95 percent participation rate. If this option is chosen for a student, the language exemption for reading only indicator shall be completed on the SBA's student biogrid sheet. In all other content areas of the SBA, the student shall participate in the Spanish-language version of the assessment (if available and appropriate) or in the English-language version with accommodations provided, if they are determined to be appropriate by the local school's team, as described in (iii) of Subparagraph (a) of Paragraph (2) of Subsection ~~[L-]~~ M. of 6.29.1.9 NMAC. For the subtests other than reading, the test completion status shall be student tested all sessions, and the types of accommodations that are provided, if any, shall be indicated on the student biogrid sheet. Students who have been in U.S. schools for less than three consecutive years shall participate in the statewide assessment program in one of three ways: the student may participate in the standard administration of the English-language version of the assessment without accommodations; the student may participate in the English-language version of the assessment with appropriate accommodations; or the student may participate in the standard administration of the Spanish-language version of the assessment, where available and appropriate. Locally developed portfolio assessments are not permitted, under the terms of federal law.

(ii) Waivers for home language assessment. Students who have been in U.S. schools for three or more consecutive years shall participate in the English-language version of the assessment with or without allowable accommodations, unless a waiver request to continue the testing of the student in the home language of Spanish is approved by the secretary. If, after three consecutive years in U.S. schools, the district or charter school determines (on a case-by-case basis) that academic assessments in the student's home language of Spanish would yield more accurate and reliable information about the student's knowledge of a subject, the district or charter school may request a waiver from the secretary to continue to assess the student in the home language of Spanish. Approved waivers are effective for the current year only; annual waiver requests may be approved for a maximum of two years. The waiver request shall be submitted to the secretary for approval at least three months before the assessment, by the district's superintendent or the charter school administrator. The request shall take the form of a memorandum that includes: student name, student state identification number, school in which the student

is currently enrolled, student's grade level, student's English language proficiency scores (from the NMELPA) and date(s) of most recent NMELPA administration, an indication of whether this is the first or second waiver request for the student, the reason or justification for the waiver request, and names of the school team members involved in the decision to request the waiver.

(iii) Accommodations. Districts and charter schools shall provide accommodations to English language learners after consideration of their appropriateness for the individual student. To determine the appropriateness of allowing accommodations, the district or charter school shall consider the student's level of proficiency in all domains of language (listening, speaking, reading, writing and comprehension) and the nature of the school's instructional program. The district or charter school shall ensure that students do not receive accommodations without current justification supported by data. District and school staff may obtain the technical assistance on procedures for accommodations from the department's district test coordinator's manual or from the department. Each school shall utilize a team to review individual student progress in order to determine accommodations. For students being served on an individualized education program (IEP) or Section 504 Plan, those teams (IEP or Section 504) will respectively determine appropriate test accommodations. For all other students, the school may use its student assistance team (SAT) or form another school-based team for this purpose, but the team shall be comprised of at least three school staff, including staff who are familiar with the student's abilities and language needs, standardized test procedures and valid ELL test accommodations. Team members may include: the student's bilingual multicultural education- or TESOL-endorsed teacher, the bilingual multicultural education program coordinator, the student's other teacher(s), administrators or school test coordinators, or the school counselor. The student's parent or guardian, the student and other staff members may be also included, as appropriate. The team shall base its decisions about appropriate accommodations on the following: annual review of the student's progress in attaining English proficiency, student's current English language proficiency, including the student's experience and time in U. S. schools, student's expected date for exiting English language learner accommodations, student's familiarity with the accommodation under consideration, the primary language of instruction used in the content area to be assessed and the length of time that the student has received instruction in that language, and the student's grade level. Written documentation of accommodation decisions made by the team shall be stored in the student's cumulative file and shall be reported to the department's bureau of assessment and evaluation.

(b) Students with IEPs. Students with IEPs who receive special education and related services shall participate in all statewide and district-wide assessments of student achievement or in state-approved alternate assessments. Pursuant to Subsection E of 6.31.2.11 NMAC, 34 CFR 300.320 (a)(2)(ii) and 34 CFR 300.320(a)(6), the IEPs for such students shall specify which assessments each student will participate in and what, if any, accommodations or modifications in administration are needed to enable the student to participate. The IEPs for students who will not participate in a particular statewide or district-wide assessment shall meet state-approved criteria, methods and instruments.

(c) Waiver of the eleventh grade SBA (graduation requirement assessment).

(i) With the approval of the local board of education or charter school governing body, the local superintendent or charter school administrator may request written approval from the secretary to award a diploma to a student who has not passed the eleventh grade SBA. The district or charter school shall document student attainment of required competencies through an alternative assessment procedure and shall submit such a request using the department's *eleventh grade SBA waiver request* form. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; statement of applicable district or charter school policy, list of students for whom the waiver request is being made including: student name, school, date of board approval, and statement of whether or not competencies are documented through an alternative assessment; and rationale for request.

(ii) With appropriate documentation, a passing score on another state's graduation requirement assessment shall substitute for the eleventh grade SBA.

M.N. Indigent identification and guidelines.

(1) A student who has been deemed eligible for free or reduced-price school meals, or a student who has been identified by the children, youth and families department as being in the custody of the state, shall be deemed indigent for the purposes of remediation programs and damage of instructional materials, as discussed in Sections 22-2C-6 and 22-15-10 NMSA 1978.

(2) A parent or guardian of a student who has not applied for free or reduced-price school meals shall be notified in writing by the local school board or governing body of a charter school of the availability of remediation at no charge upon an eligibility determination for free or reduced-price school meals.

[N.]O. Emergency drills and practiced evacuations.

(1) Emergency drills shall be conducted in each public school and private school in the state, as follows:

(a) at least once per week during the first four weeks of the school year, and at least once per month during the remainder of the school year;

(b) two of these drills shall be shelter-in-place drills;

(c) one of these drills shall be an evacuation drill;

(d) nine of these drills shall be fire drills, with one fire drill required each week during the first four weeks of school;

(e) in locations where a fire department is maintained, a member of the fire department shall be requested to be in attendance during the emergency drills for the purpose of giving instruction and constructive criticism;

(f) it shall be the responsibility of the person in charge of a school to carry out the provisions related to emergency drills.

(2) Requirements to comply and penalties for non-compliance:

(a) It shall be the responsibility of the superintendent of a school district, a charter school administrator or private school counterpart(s) to ensure that each school under the person's authority follows the requirements set forth in Subsection **[N.] O** of 6.29.1.9 NMAC.

(b) In the event that the person responsible for complying with Subsection **[N.] O** of 6.29.1.9 NMAC fails or refuses to comply with this subsection, the department may, in the case of a public school, take any action designed to ensure prompt corrective action or future compliance, including reporting the non-compliance to either the state fire marshal or to a local fire department. In the case of a private school, the department will report the non-compliance to either the state fire marshal or to a local fire department and may consider adverse licensure action.

(c) Failure or refusal to comply with the requirements in Subsection **[N.] O** of 6.29.1.9 NMAC for holding emergency drills shall constitute grounds to suspend or revoke the license of the person responsible for compliance. The due process procedures under the Uniform Licensing Act (Sections 61-1-1 through 61-1-31 NMSA 1978) shall apply.

[O.]P. School facilities and grounds. Pursuant to Subsection **[B.] C** of 6.29.1.9 NMAC (*Duties of the Superintendent*); Subsection D of 6.12.6.8 NMAC (*School District Wellness Policy*); and 6.19.3 NMAC (*Unsafe School Choice Option*), each school district or charter school shall ensure that all buildings, facilities and grounds provide a safe and orderly environment for public use; i.e., that they shall be:

(1) safe, healthy, orderly, clean and in good repair;

(2) in compliance with the Americans with Disabilities Act-Part III and state fire marshal regulations, Sections 59A-52-1 through 59A-52-25 NMSA 1978;

(3) safe for conducting experiments and school projects in all school laboratories and shops, as established in written school safety procedures which are reviewed annually; these procedures include, but are not limited to:

(a) personal protective equipment;

(b) adequate ventilation and electrical circuitry;

(c) material safety data sheets;

(d) body and eye washes; and

(e) training appropriate for each teaching situation;

(4) the maximum number of occupants in a laboratory or shop teaching space shall be based on the following:

(a) the number of work stations;

(b) the building and fire safety codes;

(c) the design of the laboratory or shop teaching facility;

(d) appropriate supervision and the special needs of students; and

(e) all applicable OSHA regulations;

(5) appropriate procedures for the storing, handling and removal of toxic or dangerous substances shall be established and implemented; all school programs (including those areas noted above and custodial areas, art room, library and cafeteria) shall comply with standard safety practices and all applicable state and federal regulations;

(6) use of pesticides by districts and charter schools will be governed by the following standards:

(a) Definitions as used in this section:

(i) "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

(ii) "Pest" means any living organism injurious to other living organisms, except humans, viruses, bacteria or other microorganisms in or on other living organisms other than plants, which is declared to be a pest pursuant to the Pesticide Control Act, Sections 76-4-1 through 76-4-39 NMSA 1978.

(b) Districts and charter schools will develop procedures for the implementation of pest management with consideration for reducing the possible impact of pesticide use on human health and the environment, including people with special sensitivities to pesticides. Procedures will include, but are not limited to, the following:

(i) No pesticide may be applied to public school property and no pest control device, as defined in the New Mexico Pesticide Control Act, may be used on public school property except those pesticides and devices currently registered for legal use in the state by the New Mexico department of agriculture.

(ii) No pesticide may be applied to public school property except by those persons certified in the applicable category and currently licensed by the New Mexico department of agriculture or by employees under their direct supervision.

(iii) Pesticides will only be applied in or on the outside of school buildings when a pest is present, and will not be applied on a regular or calendar basis unless it is to treat an infestation and is a part of a pest management system being implemented to address a particular target pest. A pest is considered to be present when it is observed directly or can reasonably be expected to be present based on finding evidence, such as droppings, body parts, or damage that is typically done by the pest. This section of the regulation does not apply to pre-construction termite treatments or the use of outdoor herbicides.

(iv) Pesticides that are applied in a liquid, aerosolized or gaseous form through spraying, aerosol cans, bombs, fumigation or injections into the ground, foundation or plants will not be applied on public school property when students, staff or visitors are present, or may reasonably be expected to be present within 6 hours of the application. In emergency cases, where a pest infestation threatens the health or safety of the occupants of public school property, and which requires the immediate application of a pesticide to remediate, students, staff and other school occupants will be removed from the treatment area prior to the application. Small amounts of gel or liquid pesticides applied to cracks and crevices or baits used to treat pest infestation are exempt from this section.

(v) At the beginning of each year, and when new students register, schools will develop a list of parents and guardians who wish to be notified prior to pesticide application during the school year. These parents/guardians will be notified in writing prior to pesticide application. General notification of anticipated pesticide applications will occur by posting or dissemination of notices, by oral communication or other means of communication. In emergency cases where a pest infestation threatens the health or safety of the occupants of public school property, no pre-notification is required. Immediately following the application of a pesticide in emergency cases, signs will be posted indicating an application was made.

(vi) Written records of pesticide applications will be kept for three years at each school site and be available upon request to parents, guardians, students, teachers and staff.

(vii) If any part of Paragraph (6) of Subsection [Θ] P of 6.29.1.9 NMAC is found to be in conflict with the provisions of the Pesticide Control Act, the remainder of the regulation will remain in full force and effect.

[P-]Q. School district budgeting. Section 22-8-4 NMSA 1978 requires the department to prescribe forms for, supervise and control the preparation of all budgets of all public schools and school districts, and to compile accurate information concerning public school finance and administration. Sections 22-8-5 through 22-8-12.1 NMSA 1978 set out specific budget preparation and submission requirements for the department, public schools and public school districts. Regulations governing budgeting and accounting for New Mexico public schools and school districts are set out in 6.20.2 NMAC.

[Q-]R. Final course and other student grade changes. Any changes to students' course or other grades shall be governed by the state rule, "*Final Course and Other Student Grade Changes*" (6.30.10 NMAC). [6.29.1.9 NMAC - Rp, 6.30.2.10 NMAC, 6-30-2009; A, 02-12-2010; A, 10-31-2011; A, 02/28/2017; A, 07/25/2017]

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This is an amendment 6.80.4 NMAC, Section 20, effective 07/25/2017.

6.80.4.20 [GOVERNING BODY TRAINING:]

~~A. All governing body members of charter schools shall attend five hours of training at least annually on topics that include department rules, policies and procedures, statutory powers and duties of governing boards, legal concepts pertaining to public schools, finance and budget and other relevant matters.~~

~~B. Governing body members who have been in office for one or more years shall attend five hours of annual training approved by the department that is sponsored by the New Mexico school boards association (NMSBA) or the New Mexico coalition for charter schools (NMCCS).~~

~~C. Newly selected governing body members who have been in office for less than a year, shall receive three of the required five hours from attending a training course developed by the department and sponsored by the NMSBA or the NMCCS. The additional two hours of annual training for new governing body members shall consist of sessions approved by the department that are sponsored by the NMSBA or by the NMCCS.~~

~~D. In order to be credited with attendance at training courses, each attendee shall complete written attendance forms provided by the department and kept on file with the charter schools. Prior to September 1 of each year, the NMSBA or the NMCCS shall provide each head administrator of a charter school with a list of training hours earned annually by each governing body member. The accountability report of the school district or charter school shall include the names of those governing body members who failed to attend annual mandatory training.~~

~~E. The governing body of a charter school shall develop a planned program of training consistent with this section that ensures that each member of the governing body participates and complies.][RESERVED]~~
[6.80.4.20 NMAC - Rp, 6.80.4.20 NMAC, 07/25/2017]

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TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 80 ALTERNATIVE EDUCATION - CHARTER SCHOOLS
PART 5 CHARTER SCHOOL GOVERNING BODY TRAINING REQUIREMENTS

6.80.5.1 ISSUING AGENCY: Public Education Department
[6.80.5.1 NMAC - N, 07/25/2017]

6.80.5.2 SCOPE: This rule shall apply to all charter schools.
[6.80.5.2 NMAC - N, 07/25/2017]

6.80.5.3 STATUTORY AUTHORITY: Section 22-8B-5.1, NMSA, 1978
[6.80.5.3 NMAC - N, 07/25/2017]

6.80.5.4 DURATION: Permanent
[6.80.5.4 NMAC - N, 07/25/2017]

6.80.5.5 EFFECTIVE DATE: July 25, 2017 unless a later date is cited at the end of a section.
[6.80.5.5 NMAC - N, 07/25/2017]

6.80.5.6 OBJECTIVE: To establish the mandatory training course requirements for all governing body members.
[6.80.5.6 NMAC - N, 07/25/2017]

6.80.5.7 DEFINITIONS:

A. “applicant” means a source, individual or entity that has submitted an application to the department for approval to provide governing body training.

B. “approved provider” means a source, individual or entity approved by the department to provide governing body training that consists of a designated curriculum provided by a designated facilitator.

C. “department-assigned course code” means the nine digit identification code assigned to an application package that meets the substantive review requirements.

D. “designated curriculum” means the curriculum that was provided in the application submitted to the department for the purpose of receiving approval to provide training to governing bodies.

E. “designated facilitator” means the individual identified in the application submitted to the department for the purpose of receiving approval to provide training to governing bodies.

F. “eligible facilitator” means a proposed facilitator who is not disqualified for any of the reasons identified in Subparagraph (b) and (c) of Paragraph (2) of Subsection E of 6.80.5.11 NMAC.

G. “governing body member” means a member of a governing body of a charter school who will be a voting member upon completion of the initial seven hour training provided by the department or who has completed the initial seven hour training and is a voting member.

H. “school specific onboarding” means the action or process of integrating a new governing body member into the school by familiarizing the new governing body member with the school’s governance structure and requirements, other governing body members, financial status (including budget), history, contract, goals, model, staff, strengths and challenges, and current academic, financial, and organizational performance.

[6.80.5.7 NMAC - N, 07/25/2017]

6.80.5.8 MANDATORY GOVERNING BODY TRAINING COURSE - NEW GOVERNING BODY MEMBERS:

A. Within the first fiscal year of service, each new governing body member shall complete a governing body training course that consists of, at a minimum, 10 hours of governing body training.

B. No new governing body member may attend a governing body meeting and vote on any governing body business without first completing the seven hours of required training described below through an in-person training provided by the department:

(1) two hours of training on public official/charter school governing body ethics and responsibilities;

(2) two hours of training on charter school fiscal requirements;

(3) one hour of training on understanding and evaluating academic data;

(4) one hour of training on open government requirements; and

(5) one hour of training on legal and organizational performance requirements.

C. If extraordinary circumstances exist and a new governing body member is unable to attend the in-person course provided by the department within two months of being voted on to a governing body as a new governing body member, the governing body member may submit a waiver request accompanied by an explanation of the extraordinary circumstances. PED will process the waiver request within 14 days of receipt.

(1) Extraordinary circumstances exist if the individual has documented professional commitments or personal commitments that prevent the individual from attending one the scheduled training dates or if the trainings being offered are located more than 100 round trip miles from the governing body member's home address.

(2) If granted, a waiver will allow the governing body member to complete essential two hour training through a virtual course provided by the department. To meet the requirements of the waiver, the governing body member must score at least eighty percent on an assessment at the end of the course on the first attempt. The governing body member must successfully complete the two hour virtual training course within one month of being notified by the department that the waiver application is granted. Upon successful completion of the two hour virtual training course, the governing body member will be allowed to vote. Additionally, the governing body member will be required to complete the seven hour in-person course provided by the department within 12 months of beginning service as a governing body member. The governing body member must complete a total of 10 hours of approved training within the first fiscal year of service.

(3) The essential two hour virtual training course taken pursuant to a waiver does count toward the governing body member's 10 hours of mandatory minimum training required by Subsection A of 6.80.5.8 NMAC.

D. For those governing body members who have not been granted a waiver, and have completed the seven hours of required training described in Section B of 6.80.5.8 NMAC, the remaining three hours of training required to complete the first year mandatory training course shall be completed during the new governing body member's first fiscal year of service and shall be provided by an approved provider. The training shall consist of:

(1) extended time within any of the required areas identified above based on the needs identified by the school's governing body, or

(2) school specific onboarding if the school's administrator or governing body is an approved provider.

E. If a governing body member resigns his or her term prior to the end of the first fiscal year of service, the additional training hours required for that fiscal year shall be prorated based on the number of full and partial months during which the governing body member served and rounded to the nearest full hour.

[6.80.5.8 NMAC - N, 07/25/2017]

6.80.5.9 MANDATORY GOVERNING BODY TRAINING COURSE - CONTINUING GOVERNING BODY MEMBERS:

A. Unless exempted from specific hourly training requirements as laid out below, each governing body member continuing to serve on a governing body beyond the end of their first fiscal year of service shall annually complete a governing body training course that consists of, at a minimum, eight hours of governing body training provided by approved providers which addresses the following areas. The department shall provide guidance that identifies specific standards within each area; however applicants may identify additional standards within each area to address the needs of individual governing bodies and governing body members:

(1) one hour of training on public official/charter school governing body ethics and responsibilities;

(2) three hours of training on charter school fiscal requirements pursuant to the Public School Finance Act, NMSA 1978 § 22-8-1 et seq.;

(3) two hours of training on understanding and evaluating academic data, including state assessment data, school and teacher accountability systems data and interim and summative academic assessment data;

(4) one hour of training on open government and requirements regarding free public school education; and

(5) one hour of training on understanding and overseeing the organizational performance of a charter school.

B. Governing body members who have served on a governing body beyond the end of their first fiscal year of their service may be exempted from specific hourly training requirements based on the school's academic or fiscal performance.

(1) For any school that has maintained a letter grade of B or better for the three most recent years and has received no rating below C in any area of the report card for the current year, the school's governing body members shall be exempted from the requirement to complete two hours of training relating to understanding and evaluating academic data.

(2) For any school that has received an unmodified annual audit in each of the past three years with no material weaknesses, no multi-year repeat findings, no significant deficiencies, and that has received no more than two compliance findings in the current year, the school's governing body member shall be exempted from two of the three hours of required training relating to charter school fiscal requirements.

(3) The department will annually identify the schools that are eligible, under the criteria established above, to claim an exemption for their governing body members.

C. The mandatory governing body training course shall be completed in one or multiple sessions during the fiscal year.

D. The mandatory governing body training course may not consist of any of the same governing body training that was completed by the governing body member in any of the prior years of the same contract term as long as additional governing body training is available.

E. Annually, the governing body training in each of the areas identified above shall be related to specific areas of growth within each area for individual governing bodies or governing body members based on the annual governing body evaluation.

F. If a governing body member who is no longer in the first fiscal year of his or her service on the governing body resigns his or her term prior to the end of the fiscal year, the hours required for that fiscal year shall be prorated based on the number of full and partial months during which the governing body member served and rounded to the nearest full hour.

[6.80.5.9 NMAC - N, 07/25/2017]

6.80.5.10 GOVERNING BODY TRAINING REPORTING AND COMPLIANCE:

A. Annually no later than August 1, each charter school must ensure the department receives a record of attendance and completion for all governing body members who served on the governing body in the prior fiscal year. The record of attendance and completion may be provided either by the charter school or by the approved provider that provided the governing body training. Records are subject to verification by the department.

B. Records of attendance and completion shall include:

(1) the name of the governing body member;

(2) the name of the school for which the identified governing body member serves on the governing body;

(3) the governing body training's department-assigned course code.

C. Failure to timely provide records of attendance and completion of the required number of governing body training hours for all governing body members who served on the governing body of the school in a fiscal year shall be reported by the department to the authorizer. Additionally, the noncompliance may result in progressive disciplinary action by the department or the authorizer, based on the authority of that entity, which may include but is not limited to:

(1) requiring the creation of a corrective action plan and completion of mandatory department-provided governing body training at the expense of the school or governing body member for any non-compliant governing body member who is still serving on the governing body;

(2) withholding, by the department, of no more than five percent of the charter school's monthly funding until the school comes into compliance with the requirements when the school has failed to comply with its corrective action plan and has one or more non-compliant members still serving on the governing body;

(3) suspension, by the department, of any or all of the governing body's authority when the school has failed to comply with its corrective action plan, funding has been withheld for at least 30 days, and the non-compliant governing body member is still serving on the governing body; and

(4) revocation or non-renewal of the school's charter when prior disciplinary action has not resulted in the school coming into compliance and the non-compliant governing body member is still serving on the governing body.

[6.80.5.10 NMAC - N, 07/25/2017]

6.80.5.11 GOVERNING BODY TRAINING PROVIDER APPROVAL

A. No source, individual or entity may provide governing body training, as defined in the charter schools act, unless it is an approved provider providing a designated curriculum with a designated facilitator. The approved provider may provide, as governing body training, only those designated curricula with the designated facilitators for which it has received approval from the department. Department approvals are valid for a term of 36 months, but may be revoked at any time.

B. The department shall, at a minimum, accept application packages on a biannual basis from applicants seeking to be approved providers. The department shall publish the application and application deadlines on its website annually no later than January 1. The department may approve trainings provided by the department or other state agencies on its own review without requiring the department or another state agency to apply for approval of the training; this review may also occur upon request from a governing body member.

C. Review timeframes. The timeframes for approving or disapproving an application package are

- (1) administrative completeness review: 25 Days;
- (2) substantive review: 75 Days; and
- (3) overall: 100 Days.

D. Administrative review. The administrative completeness review begins the day after the department receives an application package.

(1) An application package to provide governing body training shall be administratively complete if:

(a) the application package identifies a specific individual as a proposed facilitator;

(b) the application package contains all the required information, materials, documents, attachments, signatures, and notarizations identified in the application posted on the department's website;

(c) all the application package's components are formatted as required;

(d) the proposed designated curriculum addresses at least one of the required areas identified in items Subsection A of 6.80.5.9 NMAC; and

(e) all templates are unmodified, completely filled out, and from the current application package.

(2) If the application package is administratively incomplete when received, the department shall provide the Applicant a notice of deficiency that states the reasons the application package was found to be administratively incomplete.

(a) Upon written notice to the applicant that the application package is administratively incomplete, the department shall close the applicant's file.

(b) If the submission deadline has not yet passed, an applicant may correct deficiencies in an administratively incomplete application package and submit a new application package in the same application cycle.

(3) An applicant who believes their application was erroneously designated as administratively incomplete may submit a written request for reconsideration to the department within 14 days of the date of notice.

(a) The request for reconsideration shall contain a clear statement indicating how the previously submitted application package fulfilled each of the requirements that were identified as having been deficient. The request for reconsideration shall not provide any new or additional information, documents, or materials.

(b) A request for reconsideration that does not address each deficiency identified in the notice or that contains new or additional information, documents, or materials shall not be considered and the applicant shall be notified that the request was not submitted according to subsection and the applicant's file is closed.

(4) The department shall review a request for reconsideration that is submitted according to Paragraph (3) of Subsection D of 6.80.5.11 NMAC and provide a decision on the request for reconsideration within 14 days of receipt.

(a) If the department determines the application package was erroneously designated as administratively incomplete, the department shall reopen the applicant's file and send a written notice of administrative completeness to the applicant.

(b) If the department determines the application package was correctly designated as administratively incomplete, the applicant's file shall remain closed.

(5) If the application package is administratively complete the department shall send a written notice of administrative completeness to the applicant.

(6) If the department does not provide a notice of deficiency or administrative completeness to the applicant within the administrative completeness review time-frame, the application package is deemed administratively complete.

E. Substantive review. The substantive review begins when an application package is determined to be administratively complete.

(1) Within the overall review timeframe, the department shall provide the applicant with written notice of its decision to approve or disapprove the application to provide governing body training.

(2) The department shall approve an applicant to provide a designated curriculum with a designated facilitator if the applicant meets the following substantive requirements:

(a) the applicant has provided evidence that demonstrates the designated facilitator has knowledge, skills, and experience constituting expertise in the area of the designated curriculum;

(b) the designated facilitator proposed by the applicant has not been a governing body member, administrator, senior leader or business manager of a charter school that had its board of finance suspended or its charter revoked or non-renewed at the time of the activity that was the reason for the suspension, revocation, or non-renewal;

(c) the designated facilitator proposed by the applicant has not been convicted of a crime of moral turpitude and has not had a professional license revoked and has not been subject to disciplinary action for ethical or fiscal misconduct;

(d) the applicant has demonstrated that the proposed designated curriculum addresses at least one of the required areas identified in items Subsection A of 6.80.5.9 NMAC and is legally and factually accurate;

(e) the time allotted or planned for providing the training is sufficient and not excessive for the proposed content and materials provided;

(f) if the applicant intends on charging a fee for the governing body training, the fee is reasonable as compared to local and national providers of similar trainings;

(g) the proposed designated curriculum is designed to improve governing body members' knowledge, skills, and abilities to fulfill their statutory duties, comply with all applicable laws, and ensure charter schools meet the academic performance expectations of the department and the authorizer;

(h) if the training is to be provided virtually, the application includes a technology description that identifies methods that will be used to verify participant engagement throughout the training and terminate the training if the participant is not engaged. Virtual training must also include an assessment of information understanding and retention at the end of training. The assessment must be aligned to the training, shall not be passed with a score below eighty percent, and shall not allow multiple attempts by the participant.

(i) The applicant describes a process it will use to evaluate the quality of the trainings, which includes end of training evaluations completed by all attendees to evaluate:

(ii) the knowledge and skill of the facilitator;

(iii) the quality and relevance of the information;

(iv) what actions the attendees will take based on what they learned in the governing body training; and

(v) the value of the governing training in improving the attendees' knowledge, skills, and abilities to fulfill their statutory duties and comply with all applicable laws.

F. Upon completion of the substantive review, the department shall provide the applicant a notice of denial or approval.

(1) If an application package meets the substantive requirements, the department shall provide a written notice of approval that contains:

(a) the name of the training and facilitator;

(b) the number of approved hours for which the training will be eligible;

(c) the areas identified in Subsection A of 6.80.5.9 NMAC that the training will fulfill, if any;

(d) the training's department-assigned course code; and

(e) a copy of the approved application package.

(2) If an application package does not meet the substantive requirements, the department shall provide a written notice of denial that contains:

- (a) a specific description of the reasons the application package did not meet the substantive requirements; and
- (b) a copy of the denied application package.

G. An applicant that receives a notice of denial may submit a revised application package and written request for reconsideration to the department within 14 days of the date of notice.

- (1) The request for reconsideration shall contain:
 - (a) a clear statement indicating how the previously submitted application package has been revised to address the deficiencies identified in the written notice of denial; and
 - (b) a revised application package with changes tracked with strikeouts, and red, underlined insertions.

(2) A request for reconsideration that does not address each deficiency identified in the notice shall not be considered and the applicant shall be notified that the request was not submitted according to subsection and the applicant's file is closed.

H. The department shall review a revised application package and request for reconsideration that is submitted according to Subsection G and provide a decision on the request for reconsideration within 21 days of receipt.

(1) If the department determines the revised application package meets the substantive requirements, the department shall provide a written notice of approval in accordance with Paragraph (1) of Subsection F of 6.8.50.11 NMAC.

(2) If the department determines the revised application package does not meet the substantive requirements, the department shall provide a written notice of final action and denial in accordance with Paragraph (2) of Subsection F of 6.8.50.11 NMAC. The applicant may submit a new application pursuant to any established application deadlines.

[6.80.5.11 NMAC - N, 07/25/2017]

6.80.5.12 APPROVED GOVERNING BODY TRAINING REPORTING REQUIREMENTS

A. Annually no later than August 1, each approved provider must submit a report to the department on all trainings provided during the prior fiscal year and all planned or proposed dates to provide training in the upcoming year.

- (1) For each training provided in the prior fiscal year, the report shall include:
 - (a) the date;
 - (b) the training's department-assigned course code;
 - (c) the name of each governing body member attendee and the charter school on whose governing body they serve;
 - (d) sign in and sign out sheets for all attendees;
 - (e) for virtual trainings the score on each assessment taken and the summary of participant engagement; and
 - (f) copies of or a summary of the attendees' end of training evaluations.
- (2) For all confirmed or proposed dates for the upcoming year, the report shall include:
 - (a) whether the governing body training is proposed or confirmed;
 - (b) the date and start time;
 - (c) the training's department-assigned course code;
 - (d) the proposed location of the training;
 - (e) whether the training is open for general attendance by governing body members or is being offered to a specific, limited audience;
 - (f) the cost of the training; and
 - (g) the process for registration if the training is open for general attendance by governing body members.

B. For any governing body training s that were not reported as proposed trainings in the August 1 report to the department, the approved provider must provide written notice to the department at least 14 days prior to providing governing body training . The notice shall include the information identified in Paragraph (2) of Subsection A of 6.80.5.12 NMAC.

C. Each approved provider must provide the department with written notice within seven days if at any time the designated facilitator's status as an eligible facilitator changes for the reasons outlined in Items (ii-v) Subparagraph (h) of Paragraph (2) of Subsection E of 6.80.5.11 NMAC.

D. Annually no later than July 30, the department shall publish a list of all governing body trainings that are open for general attendance by governing body members on the department's website.

(1) The listing shall include:

- (a) the date and start time;
- (b) the training and facilitator name;
- (c) the training's department-assigned course code;
- (d) the location of the training, if available;
- (e) the number of approved hours for which the training will be eligible;
- (f) the requirements identified in Subsection A of 6.80.5.9 that the training will

fulfill;

- (g) the cost of the training;
- (h) the process for registration; and
- (i) whether the governing body training is proposed or confirmed.

(2) Within seven days of receipt of notice that governing body training will be provided, for which the department did not receive notice in the annual reports, the department shall update the listing on its website with the information identified in Subsection C of 6.80.5.12 NMAC.

E. Annually no later than August 15, the department shall publish on its website the prior year reports, described in Paragraph (1) of Subsection A of 6.80.5.12 NMAC from each approved provider.

F. Failure to timely provide the reports required in Subsections A and B of 6.80.5.12 NMAC may result in revocation or suspension of the approved provider status.

[6.80.5.12 NMAC - N, 07/25/2017]

6.80.5.13 SUSPENSION OR REVOCATION OF APPROVAL OF GOVERNING BODY TRAINING

A. Any approved provider may have that approval suspended or revoked for the following reasons:

(1) Failure to timely provide the reporting identified in 6.80.5.12 NMAC, including:

- (a) annual reports, or
- (b) reports of trainings that will be provided that were not identified in the annual

reports.

(2) A change in the status of the designated facilitator as an eligible facilitator as a result of any of the following:

(a) the charter school of which the designated facilitator is a governing body member, administrator, senior leader or business manager has its board of finance suspended or its charter revoked or non-renewed and the designated facilitator was in the role at the school at the time of the activity that was the reason for the suspension, revocation, or non-renewal; or

(b) the designated facilitator is convicted of a crime of moral turpitude or has a professional license revoked or has been subject to disciplinary action for ethical or fiscal misconduct.

(3) Failure to keep appropriate and accurate governing body training records, which may include:

- (a) falsifying attendance records for any governing body member;
- (b) failing to provide or collect responses to the end of training survey;
- (c) failing to provide verification of completion or attendance; or
- (d) failing to keep sign-in and sign-out logs.

(4) Providing a governing body training that is not approved while identifying the training as approved, which may include:

- (a) using a facilitator other than the designated facilitator;
- (b) using a curriculum other than the designated curriculum;
- (c) charging a fee in excess of the reasonable fee identified in the application; or
- (d) providing training for a time period that is substantially shorter than the time for

which the training is approved.

B. If the department determines there is reason to suspend or revoke the approved provider status, the department shall provide a written notice of contemplated revocation or suspension.

(1) The notice shall contain:

considered;
suspension; and
suspension.

- (a) the course codes and names for which the revocation or suspension is being
- (b) a specific description of the reasons for the suspension or revocation;
- (c) if the department is proposing a suspension, the term and scope of the
- (d) the process for responding to the notice of contemplated revocation or

(2) An approved provider that receives a written notice of contemplated revocation or suspension may submit a response within 14 days of receiving the notice. The response shall contain:

- (a) a clear statement that responds to each of the reasons for the contemplated action; and

- (b) evidence or documentation to support the statement.

(3) The department shall review a response to a notice of contemplated revocation or suspension within 21 days of receipt.

- (a) If the department determines the suspension or revocation is appropriate and justified, the department shall provide a written notice of suspension or revocation in accordance with Paragraph (1) of Subsection B of 6.8.50.13 NMAC.

- (b) If the department determines the suspension or revocation is not appropriate and justified, the department shall provide a written notice that identifies:

- (i) the continued term of approval for each of the course codes and names for which the revocation or suspension was being considered; and
- (ii) the specific response and evidence that supported the finding that the suspension or revocation was not appropriate or justified.

C. If an approved provider is suspended or revoked, the department shall, within seven days of the action remove that approved provider's trainings from the listing on its website identified in Subsection D of 6.80.5.11 NMAC. The department shall also provide notice on its website that the approved provider has had its approval revoked for suspended.

[6.80.5.13 NMAC - N, 07/25/2017]

HISTORY OF 6.80.5 NMAC: [RESERVED]