

STATE OF NEW MEXICO
LEGISLATIVE EDUCATION STUDY COMMITTEE

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October 12, 2011

MEMORANDUM

TO: Legislative Education Study Committee

FR: Kevin Force, JD

RE: PROPOSED RULEMAKING

On September 15, 2011, the Public Education Department (PED) published in the *New Mexico Register* a notice of proposed rulemaking announcing amendments to existing rules, and the repeal of an existing rule (see Attachment 1, *PED Notice of Proposed Rulemaking 9/15/11*):

- **Amend** 6.60.5 NMAC School Personnel-General Provisions, Competency Testing for Licensure; and
- **Repeal** 6.30.11 NMAC Academic Proficiency and Attendance Tied to Instruction Permits.

This staff memo will briefly outline:

- the department’s proposed actions regarding both these administrative rules; and
- background of the proposed amendment to 6.60.5 NMAC, School Personnel-General Provisions, Competency Testing for Licensure.

6.60.5 NMAC School Personnel-General Provisions, Competency Testing for Licensure

Proposed Rule

This rule establishes the New Mexico Teacher Assessments (NMTA) as the primary acceptable examination for educator licensure in New Mexico. The rule also provides for exceptions to the general requirement that all teaching candidates seeking licensure must pass the NMTA with a score of at least 240. One of these exceptions addresses individuals seeking an alternative testing

arrangement because they are deaf, or hard of hearing. The original language of the rule would require such persons to pass the NMTA basic skills portion, with requested modifications to the testing arrangements, with a score of 240, or greater. This requirement is in addition to requirements that these candidates also pass an alternative assessment conducted in a face-to-face presentation of a portfolio to demonstrate teacher competency.

PED proposes to amend 6.60.5 NMAC to strike the language requiring a passing score of 240 on the basic skills portion of the NMTA, as administered with alternative arrangements, as a condition for requesting an alternative assessment (see Attachment 2, *Proposed Rule: School Personnel-General Provisions, Competency Testing for Licensure*).

Background

During their May 2011 meeting, the Legislative Education Study Committee (LESC) heard testimony from Dr. Sandra Rodriguez, Advocate for the Deaf and Hard of Hearing, relating to concerns that the licensure department at PED may not have been complying with provisions in current law that provide for an alternative portfolio assessment, *in lieu of all or part of the NMTA*, for candidates who are deaf or hard of hearing (emphasis added).¹

According to Dr. Rodriguez:

- current law allows a person who has a degree from an accredited teacher education program and who is deaf or hard of hearing to demonstrate competency for a level one, level two, or level three license through a portfolio assessment in lieu of all or part of the NMTA;
- until rules have been effective for a period deemed sufficient by PED for a deaf or hard of hearing person to submit a portfolio, any eligible deaf or hard of hearing person who has a degree from an accredited teacher education program is to be granted a temporary teaching license for the level of licensure for which the person will likely qualify;
- the temporary teaching license is effective for no longer than two school years;
- PED rule requires persons seeking an alternative assessment to pass the Basic Skills portion of the NMTA with a minimum score of 240 in order to be eligible for a portfolio assessment for the two additional portions of the NMTA; and
- because of the PED rule, candidates granted a temporary license are in a position where they might lose licensure primarily because there was no alternative route or rule in effect when they were granted temporary licensure.

In response to Dr. Rodriguez' testimony, several committee members expressed concern that agencies were using rule to impose requirements that are contrary to provisions in state law. A member stated that the provisions in law were intended to address the inappropriateness of requiring deaf and hard of hearing teachers to take the standard NMTA and suggested that PED revisit the provisions in law and revise the department's rule. As a result of the committee discussion, the chair directed LESC staff to draft a letter from the committee to PED, requesting a response to the committee's concerns (see Attachment 2, *Letter from Representative Rick Miera, Chair, and Senator Cynthia Nava, Vice Chair, to Secretary-designate Skandera, dated July 26, 2011*).

¹ Section 22-10-11.2 NMSA 1978

6.30.11 NMAC Academic Proficiency and Attendance Tied to Instruction Permits

Proposed Rule

This rule establishes uniform requirements and procedures for determining whether minors have demonstrated a certain level of academic proficiency, or school attendance, in order to be granted an instruction permit by the Motor Vehicle Division (MVD).

PED proposes to repeal this rule (see Attachment 4, *Proposed Repeal: Academic Proficiency and Attendance Tied to Instruction Permits*).

Background

In 2009, both the Taxation and Revenue Department (TRD) and PED promulgated rules to implement requirements for the issuing of instruction permits to minor students that are not included in state law:

- In January, 2009, TRD promulgated 18.19.5.118 NMAC, Instruction Permit-Purpose-Criteria, the requirements of which would be applicable to applications for permits submitted on or after September 1, 2011 (see Attachment 5, *18.19.5.118 NMAC, Instruction Permit-Purpose-Criteria*).
- In November 2009, a PED news release announced a public hearing for a rule that would tie eighth grade student proficiency and ninth grade student attendance to New Mexico driving instruction permits (see Attachment 6, *PED News Release, dated 11/4/09*).
- The news release noted that:
 - because this rule would go into effect on December 31, 2009, the requirements for meeting proficiency and attendance would only apply to those minors submitting applications to the MVD for driving instruction permits on or after September 1, 2011;
 - because the proposed rule looks at academic proficiency in the eighth grade, this requirement might also have applied to students who were currently in the eighth grade during school year 2009-2010, and who later requested a driving instruction permit on or after September 1, 2011; and
 - because the rule would also require meeting a 90 percent attendance rate in the ninth grade, this requirement would first apply to students in the ninth grade in school year 2010-2011 who request a driving instruction permit on or after September 1, 2011.
- In December 2009, PED promulgated their rules.

As of October 12, 2011, TRD has not published any notices of public hearing or proposed rulemaking to amend or repeal their rule.

The TRD rule contains the required criteria that a student affected by the rule must meet in order to receive an instruction permit, while the PED rule contains the procedures and mechanisms by which a student might meet the criteria.

Because these rules appear interdependent, it is uncertain what effect the impending repeal of the PED rule will have upon the TRD rule.

PED Notice of Proposed Rulemaking 9/15/11

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

The Public Education Department hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on October 17, 2011 from 9:00 a.m. to 10:00 a.m. The purpose of the public hearing will be to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
6.60.5 NMAC	School Personnel – General Provisions, Competency Testing for Licensure	Amend
6.30.11 NMAC	Academic Proficiency and Attendance Tied to Instruction Permits	Repeal

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Matthew Montano, Educator Quality Division, New Mexico Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (Matthew.montano1@state.nm.us) (505)-827-4522 fax (505) 827-3525.

Written comments must be received no later than 5:00 p.m. on October 17, 2011. However, submission of written comments as soon as possible is encouraged.

The proposed rulemaking actions may be accessed on the Department’s website (<http://ped.state.nm.us>) or obtained from Matthew Montano, Division Manager, Educator Quality Division, New Mexico Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (Matthew.montano1@state.nm.us) (505)-827-4522 fax (505) 827-3525. The proposed rules will be made available at least thirty days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Matthew Montano, (Matthew.montano1@state.nm.us) or at (505)-827-4522 as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

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David Harrell, PhD, Deputy Director

July 26, 2011

Ms. Hanna Skandera
Secretary-designate of Public Education
300 Don Gaspar Avenue
Jerry Apodaca Education Building
Santa Fe, New Mexico 87501-2786

Dear Ms. Skandera:

We are writing to request your response to some teacher licensure issues that arose during the May 2011 interim meeting of the Legislative Education Study Committee (LESC).

At that meeting, the committee heard testimony from Dr. Sandra Rodriguez, Advocate for the Deaf/Hard of Hearing, who expressed her concerns over what she called the "lack of compliance" by the Licensure Bureau of the Public Education Department (PED) with recent provisions in the *Public School Code* addressing the unique circumstances of deaf and hard of hearing candidates for teacher licensure. Dr. Rodriguez also provided the committee with a copy of her letter to you on May 20, 2011 explaining these concerns.

The fundamental issue, as you may recall, is an apparent discrepancy between state law and PED rule. Subsection A of Section 22-10A-11.2 NMSA 1978 allows a person "who has a degree from an accredited teacher education program and who is deaf or hard of hearing [to] elect to demonstrate competency for a level one, two or three license through a portfolio assessment *in lieu of all or part of the New Mexico teacher assessment*" (emphasis added). Despite this requirement in law, however, the PED rule that Dr. Rodriguez cited – 6.60.5.10 NMAC – indicates that deaf and hard of hearing candidates for teacher licensure must first pass the standard teacher assessment in basic skills, with accommodations, before requesting the portfolio option for the other assessments.

Another issue that Dr. Rodriguez identified is that the alternative assessment request form that the rule requires is not readily available.

As LESC members discussed these issues, two concerns in particular emerged:

- that the PED rule seems to contradict the intent of the legislation to eliminate inappropriate assessment requirements of deaf and hard of hearing candidates for teacher licensure; and
- that in this instance, as well as others that have come to the committee's attention, state agencies seem to be using rule to impose requirements contrary to provisions in law.

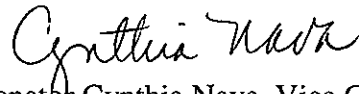
On behalf of the LESC, we request your response to the concerns raised in this letter.

Thank you for considering this request.

Sincerely,



Representative Rick Miera, Chair



Senator Cynthia Nava, Vice Chair

xc: Members of the Legislative Education Study Committee
Dr. Sandra Rodriguez, Advocate for the Deaf/Hard of Hearing

Proposed Rule: School Personnel-General Provisions
Competency Testing for Licensure

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 60 SCHOOL PERSONNEL - GENERAL PROVISIONS
PART 5 COMPETENCY TESTING FOR LICENSURE

6.60.5.1 ISSUING AGENCY: Public Education Department (PED)
[12-31-98, 07-30-99; 6.60.5.1 NMAC - Rn, 6 NMAC 4.2.2.2.1, 10-13-00; A, 04-29-05; A, 06-15-09]

6.60.5.2 SCOPE: All persons seeking teaching licensure, certain licensure endorsements, and bilingual education endorsement on or after July 30, 1999; all persons seeking administrator, school counselor, educational diagnostician licensure after September 1, 2007, and all persons who have registered to take or have taken any portion of the New Mexico teacher assessments.
[12-31-98, 07-30-99; 6.60.5.2 NMAC - Rn, 6 NMAC 4.2.2.2.2 & A, 10-13-00; A, 07-01-01; A, 07-15-02; A, 04-29-05; A, 10-31-07]

6.60.5.3 STATUTORY AUTHORITY: Sections 22-2-1 and 22-2-2, NMSA 1978.
[12-31-98; 6.60.5.3 NMAC - Rn, 6 NMAC 4.2.2.2.3, 10-13-00; A, 07-01-01; A, 04-29-05]

6.60.5.4 DURATION: Permanent
[12-31-98; 6.60.5.4 NMAC - Rn, 6 NMAC 4.2.2.2.4, 10-13-00]

6.60.5.5 EFFECTIVE DATE: July 30, 1999, unless a later date is cited in the history at the end of a section.
[12-31-98, 07-30-99; 6.60.5.5 NMAC - Rn, 6 NMAC 4.2.2.2.5 & A, 10-13-00]

6.60.5.6 OBJECTIVE: This rule is adopted by the "PED" for the purpose of establishing the New Mexico teacher assessments ("NMTA") as the primary acceptable examination for educator licensure in New Mexico. Although the PED adopts the New Mexico teacher assessments as the successor examination to the core battery of the national teachers examination, this rule also provides for acceptance of passing test scores from those applicants who took the core battery of the national teachers examination and have applied for licensure on or after July 30, 1999. This rule also establishes the New Mexico content knowledge assessments ("NMCKA"), which is part of the NMTA, as the content tests required to be taken to hold certain endorsements on teaching licenses or to receive an initial elementary K-8 license or pre K-12 special education license. This rule also establishes Prueba de Español para la Certificación Bilingüe as the PED's required Spanish language proficiency examination for persons seeking an endorsement to a teaching license in Spanish/English bilingual education and allows that test or its predecessor to be used as the content knowledge test to be taken for an endorsement in modern, classical and native languages for Spanish. This rule also allows the national family and consumer sciences test to be used as the content knowledge test to be taken for an endorsement in family and consumer sciences. Lastly, this rule establishes procedures for investigating NMTA testing irregularities and taking corrective action.
[12-31-98, 07-30-99; 6.60.5.6 NMAC - Rn, 6 NMAC 4.2.2.2.6 & A, 10-13-00; A, 07-01-01; A, 07-15-02; A, 02-14-03; A, 04-29-05; A, 05-31-06; A, 10-31-07]

6.60.5.7 DEFINITIONS:

A. "NMCKA" means the New Mexico content knowledge assessments, which are the teacher-tests approved by the PED which individuals must take and pass in order to receive endorsements on an initial license or as an option to add endorsements to an existing license in language arts, reading, mathematics, science, social studies, the arts (music or visual arts), modern, classical and native languages, (Spanish, French, German); health, physical education, library/media, teaching English to speakers of other languages (TESOL), and family and consumer sciences, or to receive initial licensure in elementary education from grades K-8 or special education pre K-12.

B. "NMTA" means the New Mexico teacher assessments, which are the tests approved by the PED that all individuals must take and pass in order to receive initial educator licensure; the NMTA consists of the New Mexico assessment of teacher basic skills, the New Mexico assessment of teacher competency (at the early childhood, elementary and secondary levels), and the New Mexico content knowledge assessments ("NMCKA"); it shall include any test materials related to a testing applicant's taking of or registration for the NMTA.

Proposed Rule: School Personnel-General Provisions Competency Testing for Licensure

C. "Test administrator" means the business entity, namely, the national evaluation systems, inc. or NES that developed the NMTA, administers the NMTA at testing centers throughout New Mexico, scores the NMTA, and reports NMTA testing results to the PED.

D. "Testing applicant" means a person who has filed an NMTA registration form with the test administrator, or who has not yet taken a portion of the NMTA.

E. "Testing irregularity" means any circumstance within or beyond the control of a testing applicant that, in the sole opinion of the PED or NES raises doubts about the propriety of a testing applicant's NMTA registration, NMTA score, or conduct during an NMTA test.

F. "Withheld NMTA score(s)" means the suspension of use by and disclosure to a testing applicant of an NMTA score(s) for up to 120 days upon a determination made by the PED professional licensure bureau director that a testing irregularity is likely to have occurred.

G. "Voided NMTA score(s)" means the cancellation, invalidation and non-disclosure of a testing applicant of an NMTA score(s) after a final determination of testing irregularity by the PED's professional licensure bureau director or by a hearing officer of the secretary of education.

H. "Rules of test participation" means any written rules in the applicable NMTA registration bulletin that a testing applicant has expressly agreed to comply with as a condition of registering for or taking the NMTA.

I. "Educator licensure application" means an application for any professional teaching, administrator, or instructional support provider license, excluding licensure for an athletic coach, educational assistant, or substitute teacher.

J. "Core academic subjects" language arts, reading, mathematics, science, modern and classical languages, except the Native American languages and cultures of New Mexico tribes or pueblos, the arts, including music and visual arts, and social studies which includes history, geography, economics, civics and government, and modern and classical languages.

K. "Highly qualified", under this rule, means a teacher of the core academic subjects who has met all license or endorsement requirements and is not teaching under an endorsement waiver.

L. "Specialty area examination" means the New Mexico specialty area assessments, which are the tests approved by the PED for instructional support providers and administrators, which identified providers must take and pass in order to receive licensure as instructional support providers or administrators.

[6.60.5.7 NMAC - N, 07-01-01; A, 07-15-02; A, 02-14-03; A, 06-30-03; A, 04-29-05; A, 03-15-06; A, 05-31-06; A, 10-31-07]

6.60.5.8 REQUIREMENTS: The NMTA consists of two generic categories of assessments. The first category is the basic skills and competency assessments identified at Subsection A of 6.60.5.8 NMAC below. The second category is the content knowledge assessments ("CKA"), sometimes called content tests, identified at Subsection B of 6.60.5.8 NMAC below.

A. Beginning July 30, 1999 except for those individuals covered by Subsection C of 6.60.5.8 NMAC, below all applicants for initial licensure in addition to meeting all other licensure and background check requirements of the PED, are required to take the basic skills and competency assessments of the NMTA, which consist of the following tests and obtaining the following passing scores:

(1) assessment of teacher basic skills: passing score = 240; and

(2) either:

(a) assessment of teacher competency, elementary level (for those seeking elementary K-8 licensure, middle level 5-9, special education pre K-12 licensure or grade pre K-12 licensure): passing score = 240; or

(b) assessment of teacher competency, secondary level (for those seeking secondary 7-12 licensure including special education pre K-12 licensure, middle level 5-9 or grade pre K-12, or special education pre K-12): passing score = 240; or

(c) assessment of teacher competency, early childhood level (for those seeking early childhood birth-grade 3 licensure or special education pre K-12 licensure): passing score = 240.

B. In addition to the testing requirement above, all applicants for initial teacher licensure must take and pass a test in their content area subject according to the following schedule:

(1) Beginning with the September 2002, administration of the PED's content testing, if applicants are seeking licensure in elementary K-8, they shall take and pass the PED's CKA in elementary education prior to issuance of that license except as provided in Paragraph (6) of Subsection B of 6.60.5.8 NMAC.

Proposed Rule: School Personnel-General Provisions Competency Testing for Licensure

(2) Beginning with the September, 2002, administration of the PED's content testing, if applicants are applying for licensure in early childhood birth-grade 3 or elementary K-8 and are also seeking an endorsement in reading, they shall take and pass the PED's CKA in that content area prior to issuance of that endorsement.

(3) Beginning with the September, 2004, administration of the PED's content testing, if applicants are applying for licensure in early childhood birth-grade 3, elementary K-8, secondary 7-12, middle level 5-9, special education pre K-12 or grade pre K-12, and are also seeking an endorsement in the arts (music or visual arts) or modern, classical and native languages (Spanish, French, or German) they must take and pass the PED's CKA's in the respective content area prior to issuance of the endorsement(s).

(4) Beginning with the September, 2002, administration of the PED's content testing, if they are applying for licensure in secondary 7-12, middle level 5-9 or grade pre K-12 and are also seeking endorsement in language arts, reading, mathematics, science or social studies, or any combination thereof, they shall take and pass the PED's CKA in that content area prior to issuance of that license.

(5) Beginning with the September, 2006, administration of the PED's content testing if they are applying for licensure in early childhood birth-grade 3, elementary K-8, secondary 7-12, middle level 5-9, special education pre K-12 or grade pre K-12, and are also seeking an endorsement in the health, physical education, library/media, teaching English to speakers of other languages (TESOL), or family and consumer sciences, they must take and pass the PED's CKA's in the respective content area prior to issuance of the endorsement(s).

(6) An elementary K-8 licensed teacher who is new to the profession and who will be teaching language arts, social studies, mathematics, or science in a middle school or junior high school must either:

(a) take and pass the PED's middle level CKA's in each core subject area the teacher will be teaching; or

(b) complete twenty-four semester hours of coursework, at least 6 hours of which are upper division, in each core academic subject the teacher will teach and take and pass the CKA in elementary education.

(7) If they currently hold a license and seek to add an endorsement in language arts, reading, mathematics, science, social studies, the arts (music or visual arts), modern, classical and native languages (Spanish, French, or German), health, physical education, library/media, teaching English to speakers of other languages (TESOL), or family and consumer sciences, they may be issued an endorsement in the content area upon passage of the PED's CKA's in the respective content area except that a candidate who has passed the TESOL, CKA or Prueba de Español para la Certificación Bilingüe must also complete required coursework in order to add the respective endorsement.

(8) Beginning with the September, 2007, administration of PED's teacher testing if applicants are applying for licensure in special education pre K-12, they shall take and pass the PED's teacher content assessment in special education prior to issuance of that license.

(9) Beginning with the September, 2007, administration of PED's specialty area examinations, if they are applying for licensure as a school counselor, educational diagnostician or administrator, grades pre K-12, they shall take and pass the PED's specialty area examinations as provided in PED rules governing those licenses prior to the issuance of those licenses.

C. Applicants for an initial Spanish/English bilingual endorsement to a teaching license must, in addition to meeting all other PED requirements for the endorsement, pass Prueba de Español para la Certificación Bilingüe by obtaining a score of 2 or higher on any 12 of the 15 subsections. Applicants seeking this endorsement through licensure reciprocity should consult 6.60.4 NMAC for guidance.

D. Applicants for alternative licensure with teaching experience at the post-secondary level under Subsection C of 6.60.3.8 NMAC, shall be exempt from the teacher licensure testing requirements as long as they meet all other requirements for licensure.

[12-31-98, 07-30-99, 02-14-00; 6.60.5.8 NMAC - Rn, 6 NMAC 4.2.2.2.8 & A, 10-13-00; A, 07-15-02; A, 02-14-03; A, 06-30-03; A, 04-29-05; A, 03-15-06; A 05-31-06; A, 10-31-07; A, 06-15-09; A, 01-29-10]

6.60.5.9 IMPLEMENTATION: Consistent with Title I, Section 1119 (a) (2) and Title IX, Section 9101 (23) (A) (ii) of the No Child Left Behind Act (NCLB), which requires that all teachers of the core academic subjects be highly qualified by the end of the 2005-2006 school year, the PED will not issue one year licenses in the core academic subjects under this section after June 30, 2006.

[07-30-99; 6.60.5.9 NMAC - Rn, 6 NMAC 4.2.2.2.9, 10-13-00; A, 06-30-03; A, 04-29-05; A 05-31-06; A, 10-31-07; A, 01-29-10]

6.60.5.10 EXCEPTIONS:

Proposed Rule: School Personnel-General Provisions Competency Testing for Licensure

A. Applicants for an initial Spanish/English bilingual endorsement to a teaching license must, in addition to meeting all other PED requirements for the endorsement, pass Prueba de Español para la Certificación Bilingüe by obtaining a score of two (2) or higher on any twelve (12) of the fifteen (15) subsections. Applicants seeking this endorsement through licensure reciprocity should consult 6.60.4 NMAC, for guidance.

B. Applicants for alternative licensure with teaching experience at the post-secondary level under Subsection C of 6.60.3.8 NMAC, shall be exempt from the teacher licensure testing requirements as long as they meet all other requirements for licensure.

C. Exceptions for NMTA (this exception is in accordance with NMSA 22-10A; The School Personnel Act:

(1) The provisions of this paragraph shall apply to an individual who holds at least a bachelors degree, has successfully completed a teacher preparation program, can verify through a current audiological evaluation that the individual is deaf or hard of hearing and requests an alternative assessment of the NMTA.

(2) As used in this section, "deaf or hard of hearing," means: a person who is prelingually deaf or hard of hearing. Prelingual means an individual who acquired a permanent hearing loss prior to five (5) years of age that prevents the processing of linguistic information through hearing with or without amplification or other hearing assistance devices.

(3) As used in this section, "audiological evaluation" means: a hearing assessment which includes otoscopic inspection, tympanometry, unaided pure tone air and bone conduction threshold testing, as well as speech awareness and speech reception threshold testing (if applicable).

(4) The applicant must obtain an audiological evaluation from a licensed audiologist to verify the required minimum of a permanent, moderate hearing loss as determined by a pure tone average (PTA) at or greater than 41dBHL in each ear. The evaluation must be completed on a PED approved form and dated within one (1) calendar year of application submission.

(5) A person that meets the eligibility requirements of this provision and seeking to demonstrate competencies through the alternative assessment must submit the PED approved "alternative assessment request form" as part of their complete application. The information obtained from the request form will be used to determine which alternative assessments the applicant requires and possible dates for administration of the teacher competency and CKA portions of the alternative assessment.

(6) Individuals granted access to the alternative assessment will have their alternative assessment reviewed by a committee that consists of:

- (a) a teacher of deaf or hard of hearing students;
- (b) a sign language interpreter;
- (c) a school administrator from the New Mexico school for the deaf, (NMSD);
- (d) a parent of a deaf or hard of hearing student;
- (e) a deaf or hard of hearing teacher, if one is available;
- (f) a public school employee, and
- (g) other appropriate persons as determined by the PED.

(7) A person that meets the eligibility requirements of this provision and seeking to demonstrate competencies through the alternative assessment is encouraged to request alternative testing arrangements and attempt all portions of the NMTA with alternative testing arrangements. Requests for alternative testing arrangements should describe accommodations previously received by the candidate during past standardized test administrations, documentation of audiological evaluations, and suggested modifications from a licensed audiologist. Applicants for this license that have earned a passing score of at least 240 on basic skills portion of the NMTA, teacher competency, or CKA are exempt from completing the alternative assessment in the portion they have passed. The PLB at the PED will assist eligible candidates in submitting requests for alternative testing arrangements.

~~[(8) Individuals seeking access to the alternative assessment are required to complete the basic skills portion of the NMTA with modifications after requesting alternative testing arrangements. The PLB at the PED will assist eligible candidates in submitting requests for alternative testing arrangements.]~~

~~[(9)]~~ (8) Individuals seeking an alternative assessment will demonstrate teacher competency and content knowledge by presenting a hard copy of portfolio in a face-to-face setting to the alternative assessment review committee. Applicants must obtain a passing score of 70% or greater on the teacher competency or content knowledge hard copy portfolio review to receive a score of pass.

~~[(10)]~~ (9) Applicants for this license will be charged the same amount(s) for the alternative assessment that registrants for the NMTA are charged plus the licensure-processing fee. These fees are due when the applicant submits a complete application. Applications without the appropriate fees will not be accepted.

Proposed Rule: School Personnel-General Provisions Competency Testing for Licensure

~~[(11)]~~ (10) Applicants that are unsuccessful in obtaining a passing score of 70% on the alternative assessment may reapply and must submit the applicable fees.
[07-30-99; 6.60.5.10 NMAC - Rn, 6 NMAC 4.2.2.2.10 & A, 10-13-00; A, 07-15-02; A, 02-14-03; A, 04-29-05; A, 05-31-06, A, 10-31-07; A, 06-15-09; 6.60.5.10 NMAC - N, 01-29-10; A, XX-XX-XX]

6.60.5.11 SAVINGS CLAUSE:

A. Applicants described in 6.60.5.8 NMAC applying for licensure after July 30, 1999, who have taken the professional knowledge, or communications skills tests of the core battery of the national teachers examination (NTE) that correspond with portions of the NMTA as indicated below, will be exempt from taking the same portions of the NMTA provided they have obtained the following minimum scaled score that correspond with each test of the core battery of the NTE:

- (1) professional knowledge 630 corresponds with NMTA-teacher competency 240
- (2) communication skills 644 corresponds with NMTA basic skills 240

B. Those applicants not applying for licensure under reciprocity but presenting passing test scores on comparable basic skills, teacher competency or a content area tests from out of state may be excused from taking the corresponding NMTA basic skills, teacher competency or a content area test. For any single test to be deemed to be passing, scores must show a correct response rate of at least 70 percent, regardless of the raw test scores. PED may require the applicant to provide evidence of having met the 70 percent correct response rate.

[6.60.5.11 NMAC - N, 07-01-01; A, 04-29-05; A, 10-31-07; 6.60.5.11 NMAC - Rn & A, 6.60.5.10 NMAC, 01-29-10]

6.60.5.12 TESTING IRREGULARITIES: Where a potential testing irregularity is reported to the PED, the PED shall make a preliminary inquiry to determine if further investigation is warranted.

A. If after a preliminary inquiry the PED determines that a potential testing irregularity warrants further investigation, the PED may cause that testing applicant's NMTA score to be withheld pending the completion of an investigation. The PED shall notify a testing applicant that any NMTA score suspected of being obtained by means of or following a testing irregularity may be withheld for up to 120 days pending an investigation. At the conclusion of its investigation, the PED shall notify the test administrator and the testing applicant of its findings and conclusions, whether or not a testing irregularity has been substantiated.

B. If after an investigation the PED finds and concludes that a testing irregularity is substantiated by the evidence, it may, after notifying the test administrator and the testing applicant of its findings, conclusions and intended action:

- (1) void the applicant's test score(s);
- (2) bar the applicant from retaking the NMTA for up to five (5) years;
- (3) direct that the applicant's registration fee be forfeited;
- (4) direct that the applicant's registration fee be refunded;
- (5) permit the applicant to retake all or portions of the NMTA under controlled conditions; or
- (6) impose any combination of the foregoing options.

C. If after an investigation the PED finds and concludes that no testing irregularity is substantiated by the evidence, it shall promptly notify the test administrator and the testing applicant and direct that any withheld NMTA be released and available for use in the educator licensure process.

[6.60.5.11 NMAC - N, 07-01-01; A, 04-29-05; A, 10-31-07; 6.60.5.12 NMAC - Rn, 6.60.5.11 NMAC, 01-29-10]

6.60.5.13 RIGHTS OF A TESTING APPLICANT: The PED shall advise the testing applicant at the time of notification that the NMTA score will be withheld or voided, that the applicant can at any time provide the PED with a statement or documentary evidence rebutting the likely or substantiated existence of a testing irregularity. However, the testing applicant shall be cautioned that any statement or document provided by the applicant may later be used against the applicant at a PED administrative proceeding, a civil proceeding or a criminal proceeding.

A. Where a testing applicant has an initial educator licensure application on file with the PED at the time of notification that a testing irregularity has been substantiated, the applicant shall have a right to request a hearing within 30 days of the notification and shall be afforded all the procedural and substantive due process rights contained in 6.68.2 NMAC ("Denial of Applications for Licenses for School Personnel"), which rule shall govern the proceedings. The PED may combine this hearing with a licensure denial hearing. The right to discovery shall be limited as set forth in 6.60.5.14 NMAC below.

B. Where a testing applicant does not have an initial educator licensure application on file with the PED at the time of notification that a testing irregularity has been substantiated, the applicant shall have 20 days to

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notify the PED professional licensure director ("director") of the desire to schedule a telephonic conference-call or in-person meeting with the director. Such request must be in writing. Any relevant documents may be introduced and either side may be represented by an attorney and up to three witnesses may be called. The formal rules of evidence shall not apply and either side may at their own expense request that any witness statements be sworn and that a record be made of the meeting. The director shall issue a written decision consisting of written findings, conclusions and action to be taken. The decision will be issued to the testing applicant within 14 days of the meeting. The decision of the director, which must be based on a preponderance of the evidence, shall be final and not subject to review, appeal, or reconsideration by the agency.

C. A testing applicant with an initial educator licensure application on file with the PED at the time of notification that a testing irregularity has been substantiated, may waive the right to a hearing and proceed by way of a meeting with the director as set forth in the immediately preceding paragraph.
[6.60.5.13 NMAC - N, 07-01-01; A, 04-29-05; A, 10-31-07; A, 06-15-09; 6.60.5.13 NMAC - Rn & A, 6.60.5.12 NMAC, 01-29-10]

6.60.5.14 LIMITED DISCOVERY RIGHTS: The NMTA is the primary PED-approved teacher test for the state of New Mexico. It was developed by the test administrator under contract with the PED to help identify candidates for educator licensure who have demonstrated the level of knowledge and skills necessary for performing the duties of a teacher in New Mexico's public schools. The PED holds the exclusive copyright on the NMTA. As such, the PED must safeguard not only the copyright but also the confidentiality of the NMTA. Any testing applicant who timely requests a meeting or a hearing as permitted by this rule shall have only limited access to the questions and answers of the applicant's NMTA or related materials.

A. Given the proprietary nature of the NMTA or related materials, under no circumstance shall a testing applicant's disputed or undisputed NMTA be released to a testing applicant, attorney, representative, or the general public.

B. Upon request made to the director, a testing applicant, and an attorney, or representative shall be given as much access to the applicant's disputed or undisputed NMTA or related materials as is deemed reasonably necessary by the director, or hearing officer as the case may be, to prepare for pending meeting or hearing.

C. Anyone given permission to view a testing applicant's disputed or undisputed NMTA or related materials, must sign a confidentiality agreement offered by the PED. An NMTA or related materials may only be viewed during routine office hours of the PED under supervision of a PED employee and on the PED premises. No NMTA or related materials may be written on, marked, electronically copied, hand-duplicated, or otherwise removed from the premises of the PED. The form, subject matter, substance and wording of any NMTA test question or answer may also not be removed from the premises of the PED nor may they be further disclosed in any other way. A person granted permission to review the materials covered by this section may not bring any manual or electronic copying devices to the location where the materials are offered. Such copying devices referred to in the preceding sentence shall include but not be limited to cameras, camcorders, tape recorders, writing utensils, hand-held computers, paper, briefcases, etc. The said confidentiality agreement shall accomplish this as well as other test-security goals. Anyone who enters the PED premises to review the materials covered by this section and who violates or attempts to violate any protected security measure may, at the discretion of the PED, be removed from the premises and be considered to have forfeited any additional access to an applicant's disputed or undisputed NMTA or related materials.

D. The original or copy of any NMTA or related materials used as evidence at any meeting or hearing shall also be subject to confidentiality by all attendees and participants. Accordingly, all such meetings or hearings shall be closed to the public.

[6.60.5.14 NMAC - N, 07-01-01; A, 04-29-05; A, 10-31-07; 6.60.5.14 NMAC - Rn, 6.60.5.13 NMAC, 01-29-10]

6.60.5.15 LICENSURE DENIAL OR REVOCATION: Engaging in a testing irregularity shall constitute a good and just ground to deny a testing applicant's licensure application or to revoke or suspend any license held by a testing applicant that was issued by the PED. In the case of licensure revocation or suspension, the PED shall proceed under authority and procedure of 6.68.3 NMAC ("Suspension or Revocation of a License Held by a Licensed School Individual") and the Uniform Licensing Act [Sections 61-1-1 through 61-1-31 NMSA 1978].
[6.60.5.15 NMAC - Rn, 6.60.5.14 NMAC, 01-29-10]

HISTORY OF 6.60.5 NMAC:

Pre-NMAC History:

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The material in this Part was derived from that previously filed with State Records Center and Archives under SBE Regulation No. 84-8, Relating to Competency Testing for Certification and Performance Evaluation Requirement, filed August 27, 1984;

SBE Regulation No. 84-8 Amendment No. 1, Relating to Competency Testing for Certification and Performance Evaluation Requirement, filed May 18, 1987; and

SBE Regulation No. 89-5, Competency Testing for Licensure, filed August 17, 1989.

History of Repealed Material:

6 NMAC 4.2.2.2.8.2 - Repealed 02-14-00.

Proposed Repeal: Academic Proficiency and Attendance
Tied to Instruction Permits

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS
PART 11 ACADEMIC PROFICIENCY AND ATTENDANCE TIED TO INSTRUCTION PERMITS

6.30.11.1 ISSUING AGENCY: Public Education Department
[6.30.11.1 NMAC - N, 12-31-09]

6.30.11.2 SCOPE: This rule shall apply to all minors in the state seeking to apply for instruction permits from the motor vehicle division.
[6.30.11.2 NMAC - N, 12-31-09]

6.30.11.3 STATUTORY AUTHORITY: Sections 22-2-1 and 22-2-2, NMSA 1978.
[6.30.11.3 NMAC - N, 12-31-09]

6.30.11.4 DURATION: Permanent.
[6.30.11.4 NMAC - N, 12-31-09]

6.30.11.5 EFFECTIVE DATE: December 31, 2009, unless a later date is cited at the end of a section.
[6.30.11.5 NMAC - N, 12-31-09]

6.30.11.6 OBJECTIVE: The underlying objective of this rule is to motivate minors to attend school and succeed in their studies, regardless of whether they are enrolled in a public school, non-public school or home school, by establishing uniform requirements and procedures for determining whether they have demonstrated a certain level of academic proficiency or school attendance, the demonstration of which can be used in determining the issuance or rejection of an instruction permit by the motor vehicle division.
[6.30.11.6 NMAC - N, 12-31-09]

6.30.11.7 DEFINITIONS:

A. "Alternative test" means a test other than the New Mexico standards based assessment, that is administered in a non-public school, an out of state school, department of defense school or by a home school operator, or one that is provided by the department.

B. "Home school" means the operation by the parent or legal guardian of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science.

C. "Motor vehicle division" means a division of the New Mexico taxation and revenue department ("MVD") that is responsible for administering the New Mexico Motor Vehicle Code which includes the issuance of instruction permits and drivers' licenses to those submitting an application.

D. "Nearing academic proficiency" means attaining a minimum score in reading and mathematics during a student's eighth grade as established by the laws, rules or procedures of the PED governing the New Mexico standards based assessment.

E. "New Mexico standards based assessment" ("SBA") means a system for testing students in various grades for their proficiency in the subject areas of mathematics, reading and language arts, writing, science and social studies, pursuant to the Assessment and Accountability Act (22-2C-1 to 22-2C-11 NMSA 1978). The SBA is administered annually to students in different grades in public schools and voluntarily to other students attending certain non-public schools and educational institutions in the state.

F. "Non-public school" means a school, other than a home school, that offers on-site programs of instruction and is not under the control, supervision or management of a local school board or the department and includes schools operated by or under a grant or contract from the bureau of Indian education of the United States department of the interior.

G. "Secretary" means the secretary of the public education department.
[6.30.11.7 NMAC - N, 12-31-09]

6.30.11.8 GENERAL CONSIDERATIONS:

A. This rule must be read in conjunction with 18.19.5.118 NMAC which was adopted by the tax and revenue department and requires minor applicants for an instruction permit to provide proof of identity, attendance in or completion of a driver education course, 90% school attendance in the ninth grade, and demonstrated achievement of nearing academic proficiency in the eighth grade in reading and mathematics.

B. Despite the effective date of this rule, it shall first apply only to those minors submitting applications to the MVD on or after September 1, 2011.

C. The PED alternative tests will be administered by the PED at least annually on dates and at locations throughout the state established by the PED and shall be available only to students who have not taken the New Mexico SBA because they were enrolled in a non-public school, were home schooled or came from another state or department of defense school.

D. A minor transferring from an out of state school may claim use of scores achieved in any eighth grade standards based assessment in reading and mathematics. Local school administrators or out of state issuing entities shall verify that the student

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achieved a minimum score in reading and mathematics comparable to “nearing academic proficiency”.

E. A minor transferring from a department of defense operated school may claim use of scores achieved in any eighth grade academic standards based assessment in reading and mathematics. If no such assessment was taken, the minor may take the alternative test offered by the PED. Local school administrators or department of defense officials shall verify that the student who took an eighth grade academic standards based assessment in reading and mathematics at a department of defense operated school achieved a minimum score in reading and mathematics comparable to “nearing academic proficiency”.

[6.30.11.8 NMAC - N, 12-31-09]

6.30.11.9 DEMONSTRATING ACADEMIC PROFICIENCY: In order to demonstrate academic proficiency that satisfies a condition for the issuance of an instruction permit:

A. a minor enrolled in a public school must take the New Mexico standards based assessment in the eighth grade and attain scores of “nearing academic proficiency” in both reading and mathematics;

B. a minor enrolled in a non-public school who has not taken the New Mexico standards based assessment in the eighth grade and attained scores of “nearing academic proficiency” in both reading and mathematics, may demonstrate academic proficiency by attaining a passing score in reading and mathematics as determined by the assessment used and administered by the non-public school in the eighth grade; a written certification from a non-public school of that minor having attained a passing score shall satisfy the requirement of demonstrating academic proficiency;

C. a minor attending a home school established pursuant to state law who has not taken the New Mexico standards based assessment in the eighth grade and attained scores of “nearing academic proficiency” in both reading and mathematics, may demonstrate academic proficiency by demonstrating grade-level proficiency in reading and mathematics as determined by the assessment used and administered by the home school operator; a written certification from a home school operator of that minor having attained a passing score shall satisfy the requirement of demonstrating academic proficiency;

D. a minor transferring from an out of state school or from a department of defense school who has not taken the New Mexico standards based assessment in the eighth grade and attained scores of “nearing academic proficiency” in both reading and mathematics, may demonstrate academic proficiency by attaining a passing score in reading and mathematics as determined by the assessment used and administered by the out of state or department of defense school administered in the eighth grade; a written certification from a local school administrators or out of state issuing entity of that minor having attained a passing score shall satisfy the requirement of demonstrating academic proficiency.

[6.30.11.9 NMAC - N, 12-31-09]

6.30.11.10 DEMONSTRATING 90% SCHOOL ATTENDANCE: In order to demonstrate 90% school attendance that satisfies a condition for the issuance of an instruction permit:

A. minors enrolled in a public school must obtain a certification of attaining 90% attendance in the ninth grade from the school in which they are enrolled;

B. minors enrolled in a non-public school must obtain a certification from the school in which they are enrolled that they have met 90% attendance during their ninth grade at school;

C. minors attending a home school established pursuant to state law must obtain a certification from their parent or guardian that they have met 90% attendance during their ninth grade in their home schooling;

D. a minor transferring from an out of state or a department of defense school must obtain a certification from a local school administrator or out of state issuing entity of the school from which they transferred that they have met 90% attendance during their ninth grade at that school.

[6.30.11.10 NMAC - N, 12-31-09]

6.30.11.11 REVIEW OF ADVERSE DETERMINATIONS:

A. Any person aggrieved by a written decision or determination made by the PED under this rule related to a PED-administered alternative test result, may, pursuant to the procedures set forth in this section, seek administrative review by the secretary or the secretary’s designee. Neither test results on an alternative test not administered by the PED nor denial of an MVD application for an instruction permit may be reviewed under this section.

B. A person aggrieved by the written decision or determination made by a public school under this rule to not-certify that the student has satisfied the ninth grade attendance or eighth grade reading and mathematics proficiency requirements, may, pursuant to the procedures set forth in this section, seek administrative review by the secretary or the secretary’s designee.

C. All requests for review:

(1) shall be requested within fourteen (14) calendar days of issuance of a written decision or determination, signed by and contain the address and telephone number of the parent or legal guardian of the minor seeking review;

(2) shall describe in fewer than six (6) double-spaced pages why any decision or determination complained of was erroneous; and

(3) shall be accompanied by any supporting documents the requester believes will assist the secretary in rendering a final decision but in no event shall exceed a total of fifteen (15) pages of supporting documents.

D. The secretary or the secretary’s designee shall:

(1) issue a written decision within thirty (30) calendar days of receiving a request unless, for good cause stated, the secretary or designee extends that period;

(2) after a review of the documents submitted by the students and their parents or legal guardians, determine if the

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decision or determination complained of was arbitrary, capricious, not supported by the facts or applicable law, or based upon fraud;

(3) rule on any requests to exceed the filing of the number of documents permitted or on filing a request for review late based upon good cause shown demonstrated by the parent or legal guardian seeking the exception; and

(4) not consider those documents submitted by the students and their parents or legal guardians that exceed the number of pages permitted.

E. A decision of the secretary or the secretary's designee issued under this section shall be final.

F. Any decision issued under this section that determines that a minor has satisfactorily demonstrated attendance or academic proficiency shall be notarized and issued in the form of a verified decision.

[6.30.11.11 NMAC - N, 12-31-09]

HISTORY OF 6.30.11 NMAC: [Reserved]

18.19.5.118 NMAC, Instruction Permit-Purpose-Criteria

18.19.5.116 COMMERCIAL DRIVER'S LICENSE - SPECIAL REQUIREMENTS FOR COMMERCIAL DRIVER'S LICENSE:

A. Applicants for a commercial driver's license must be 21 years of age or older, and shall have a valid class D license in their possession.

B. Drivers at least 18 but not over 21 years of age may apply for a commercial driver's license with restriction "K" on the license, which restricts its use to driving in intrastate commerce only. An applicant for the intrastate commercial driver's license must have a valid class D license in his or her possession. Applicants for a hazardous material endorsement must be 21 years of age to transport placarded amounts of hazardous material in intrastate commerce.

[2/28/90, 9/17/91, 8/20/93, 10/31/96, 2/14/00; 18.19.5.116 NMAC - Rn & A, 18 NMAC 19.5.17.5, 9/14/00]

18.19.5.117 COMMERCIAL DRIVER'S LICENSE - RECIPROCITY

A. **COMMERCIAL DRIVER'S LICENSE - RECIPROCITY WITH CANADA:** Pursuant to agreements entered into by the United States, reciprocity is also extended to any person who holds a commercial driver's license issued by the national government of Canada or any of the provinces of Canada if the license is not suspended, revoked or canceled and if the person is not disqualified from driving a commercial motor vehicle or subject to an out-of-service order.

B. **COMMERCIAL DRIVER'S LICENSE - MEXICAN DRIVER'S LICENSES:** A Mexican national issued a licencia federal de conductor by the secretariat of communication and transport of the United Mexican States may operate a commercial vehicle in New Mexico.

[2/28/90, 8/20/93, 10/31/96; 18.19.5.117 NMAC - Rn, 18 NMAC 19.5.18.1 and 18 NMAC 19.5.18.2, 9/14/00; A, 1/30/09]

18.19.5.118 INSTRUCTION PERMIT - PURPOSE - CRITERIA:

A. For purposes of 18.19.5.118 NMAC:

(1) "alternative test" means a test provided by the PED or approved by the PED pursuant to its rules and procedures and administered in a public school, non-public school or by a home school operator to measure a student's proficiency in reading and math in the eighth grade;

(2) "IDEA" means the Individuals with Disabilities Education Improvement Act of 2004 [20 U.S. Code Sec. 1400 et seq.], which is a comprehensive federal law that addresses specially designed instruction, at no cost to the parent, to meet the unique needs of a child with disabilities;

(3) "IEP" means an individualized education program, which is a written statement designed to meet the unique educational needs of a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Sections 300.320 through 300.324;

(4) "minor" means a person under the age of eighteen (18) years, but at least fifteen (15) years old;

(5) "nearing an academic proficiency score in reading and math in the eighth grade" means attaining a minimum score in reading and math during a student's eighth grade as established by the laws, rules or procedures of the PED on the New Mexico standards based assessment;

(6) "New Mexico standards based assessment" means a system for testing students in various grades for their proficiency in the subject areas of mathematics, reading and language arts, writing, science and social studies; pursuant to the Assessment and Accountability Act [22-2C-1 to 22-2C-11 NMSA 1978] and procedures of the PED, assessments on various subject areas that include science, mathematics and reading are administered annually to students in different grades;

(7) "ninety percent school attendance" means one of several indicators used pursuant to the Assessment and Accountability Act [22-2C-1 to 22-2C-11 NMSA 1978] and procedures of the PED to measure public school improvement, but would not include excused absences;

(8) "PED" means the public education department;

(9) "Section 504" means Section 504 of the Rehabilitation Act of 1973 [29 U.S. Code Section 794] and its implementing regulations, which provide that "no otherwise qualified individual with a disability shall, solely by reason of her or his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance; and

(10) "Section 504 plan" means the accommodation plan required if the individual has a mental or physical impairment that substantially limits one or more of the person's major life activities, including learning, but is not already receiving special education services under the eligibility requirements of the IDEA.

18.19.5.118 NMAC, Instruction Permit-Purpose-Criteria

B. The director may issue an instruction permit to a minor under the provisions of Subsection D of Section 66-5-8 NMSA 1978. In order to motivate minors to attend school and succeed in their studies, beginning with applications submitted to the director on or after September 1, 2011, a minor applying for an instruction permit shall provide evidence of ninety percent school attendance during their ninth grade year and at least nearing an academic proficiency score in reading and math in the eighth grade on the New Mexico standards based assessment or on an alternative test.

C. A minor applying for an instruction permit must provide the following:

- (1) satisfactory proof of identity number, identity and residency as set forth in 18.19.5.12 NMAC;
- (2) proof of attendance in or completion of a driver education course that includes a DWI prevention and education program approved by the bureau or offered by a public school;
- (3) a school compliance verification form approved by the director that shall include parental consent for the release of certain educational information to the director; the school compliance verification form shall be certified by a school official and signed by a parent to indicate consent to release the minor's student information to the director; the form shall certify that the applicant has:
 - (a) achieved ninety percent school attendance, not including excused absences, during the ninth grade year or portion of the ninth grade year prior to applying for the instructional permit; and
 - (b) demonstrated at least nearing an academic proficiency score in reading and math in the eighth grade on the New Mexico standards based assessment or on an alternative test.

D. The school compliance verification form shall permit children with disabilities as described in the IDEA and in federal and state regulations and children for whom Section 504 plans are in place to obtain certifications that consider the effect if any of their disabilities in meeting ninety percent school attendance during the ninth grade year or portion of the ninth grade year or demonstrating at least nearing an academic proficiency score in reading and math in the eighth grade. Any such certification must be based on a written IEP or Section 504 team recommendation contained in the IEP or Section 504 plan of a child with a disability. In making the recommendation to the person or official who enters the certification on the school compliance verification form where a child with a disability fails to satisfy the attendance or proficiency requirements discussed in this rule, the IEP or Section 504 team shall, pursuant to rules and procedures of the PED, consider whether a child's disability affected their ability to satisfy either or both the attendance or proficiency requirements.

E. In lieu of a school compliance verification form, an applicant may provide:

- (1) proof of graduation from a high school; or
- (2) proof of having received a general educational development certificate.

F. A minor enrolled in non-public school or in a home school shall submit satisfactory proof of identity number, identity and residency as set forth in 18.19.5.12 NMAC, proof of attendance, and proof of ninety percent school attendance and at least nearing an academic proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test, as established by the laws, rules or procedures of the PED. This evidence shall be submitted on a form approved by the director that shall include parental consent for the release of certain educational information to the director.

G. Failure to demonstrate ninety percent school attendance will result in the minor being ineligible to be issued an instruction permit until six months from the date of application, unless an administrator of a non-public school or operator of a home school certify to their non-maintenance of attendance records.

H. Failure to demonstrate nearing an academic proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test will result in the minor being ineligible to be issued an instruction permit until six months from the date of application.

I. Failure to demonstrate both ninety percent school attendance and nearing an academic proficiency score in reading and math in the eighth grade New Mexico standards based assessment or on an alternative test will result in the minor being ineligible to be issued an instruction permit until one year from the date of application, unless an administrator of a non-public school or operator of a home school certify to their non-maintenance of attendance records.

[18.19.5.118 NMAC - N, 1/30/09]

HISTORY OF 18.19.5 NMAC:

Pre-NMAC History: Certain material in this part was derived that previously filed with the Commission of Public Records - State Records Center and Archives:

MVD 70-4, (Regulation No. 70-1), In the Matter of Fixing Fees for the Purchase of Abstracts of Records of the Department of Motor Vehicles and Text of Motor Vehicle Code, filed 7/1/70.

18.19.5.118 NMAC, Instruction Permit-Purpose-Criteria

MVD 70-6, (Regulation No. 70-3), 64-13-40, Persons Not to be Licensed; 64-13-60, Authority of Division to Suspend or Revoke License; In the Matter of the Establishment of a Point System for Violations of Motor Vehicle and Traffic Laws so as to Provide a Fair and Workable Method to Effectuate the Authority Conferred Upon the DMV to Suspend a Driving License by Section 64-13-60 NMSA 1953 Compilation and Inherent in Section 64-13-40(1) Thereof, filed 9/2/70.

MVD 70-27, (Regulation No. 70-3A), 64-13-40, Persons Not to be Licensed; 64-13-60, Authority of Division to Suspend or Revoke License; In the Matter of the Establishment of a Point System for Violations of Motor Vehicle and Traffic Laws so as to Provide a Fair and Workable Method to Effectuate the Authority Conferred Upon the DMV to Suspend a Driving License by Section 64-13-60 NMSA 1953 Compilation and Inherent in Section 64-13-40(1) Thereof and Amending Regulation No. 70-3, Adopted 8/28/70, filed 11/25/70.

MVD 72-2, (Regulation No. 72-2), 64-13-40, Persons Not to be Licensed; 64-13-60, Authority of Division to Suspend or Revoke License; In the Matter of the Establishment of a Point System for Violations of Motor Vehicle and Traffic Laws so as to Provide a Fair and Workable Method to Effectuate the Authority Conferred Upon the DMV to Suspend a Driving License by Section 64-13-60 NMSA 1953 Compilation and Inherent in Section 64-13-40(1) Thereof and Amending Regulation No. 70-3A, Adopted 11/20/70, filed 7/20/72.

MVD 73-1, (Regulation No. 73-1), 64-13-40, Persons Not to be Licensed; 64-13-60, Authority of Division to Suspend or Revoke License; In the Matter of the Establishment of a Point System for Violations of Motor Vehicle and Traffic Laws so as to Provide a Fair and Workable Method to Effectuate the Authority Conferred Upon the DMV to Suspend a Driving License by Section 64-13-60 NMSA 1953 Compilation and Inherent in Section 64-13-40(1) Thereof and Amending Regulation No. 72-2, Adopted 7/20/72, filed 4/10/73.

MVD 73-5, (Regulation No. 73-3), 64-13-40, Persons Not to be Licensed; 64-13-60, Authority of Division to Suspend or Revoke License; In the Matter of the Establishment of a Point System for Violations of Motor Vehicle and Traffic Laws so as to Provide a Fair and Workable Method to Effectuate the Authority Conferred Upon the DMV to Suspend a Driving License by Section 64-13-60 NMSA 1953 Compilation and Inherent in Section 64-13-40(1) Thereof and Replacing Regulation No. 73-1, Adopted 4/10/73, filed 11/7/73.

MVD 75-1, (Regulation No. 75-1), 64-13-40, Persons Not to be Licensed; 64-13-60, Authority of Division to Suspend or Revoke License; In the Matter of the Establishment of a Point System for Violations of Motor Vehicle and Traffic Laws so as to Provide a Fair and Workable Method to Effectuate the Authority Conferred Upon the DMV to Suspend a Driving License by Section 64-13-60 NMSA 1953 Compilation and Inherent in Section 64-13-40(1) Thereof and Replacing Regulation No. 73-3, Adopted 10/15/73, filed 3/14/75.

TRD Regulations MVC 5-30:1/8, Regulations Pertaining to the Motor Vehicle Code, Section 66-5-5 NMSA 1978, filed 9/1/88.

MVD 70-16, (Regulation No. 70-13), In the Matter of Chauffeur's License as Required Under Sections 64-2-4 and 64-13-41 NMSA 1953, filed 9/2/70.

MVD 78-3, New Mexico Uniform Traffic Ordinance 1978, filed 11/6/78.

MVD 78-4, (Regulation No. 78-1) 1.00 Authorization: 66-5-7, Driver's License - Classification - Examinations; 66-5-8, Instruction Permits and Temporary Licenses; 66-5-9, Application for License or Instruction Permit; and 66-5-14; Examination of Applicants. 2.00 Classification of Licenses and Permits. 3.00 Waiver of Road Test and Certification Program, filed 12/28/78.

MVD 79-1, (Regulation No. 79-1) 1.00 Authorization: 66-5-7, Driver's License - Classification - Examinations; 66-5-8, Instruction Permits and Temporary Licenses; 66-5-9, Application for License or Instruction Permit; and 66-5-14; Examination of Applicants. 2.00 Classification of Licenses and Permits. 3.00 Waiver of Road Test and Certification Program, filed 1/3/79.

Transportation Rule No. 83-2-MVD, Classification of Driver Licenses and Permits, filed 12/9/83.

Transportation Rule No. 84-2-MVD, Limited Driver's License, filed 12/9/83.

TRD MVC 5-32:1, Regulations Pertaining to the Motor Vehicle Code, Section 66-5-32 NMSA 1978 (Reinstatement of Suspended License - Conditions), filed 4/7/89.

TRD MVC 5-7: 1&2, Regulations Pertaining to the Motor Vehicle Code, Section 66-5-7 NMSA 1978, Driver's License - Classification; Examinations, filed 2/28/90.

TRD MVC 5-19:1, Regulation Pertaining to the Motor Vehicle Code, Section 66-5-19 NMSA 1978, Restricted Licenses, filed 2/28/90.

TRD MVC 5-54:1, Regulations Pertaining to the Motor Vehicle Code, Section 66-5-54 NMSA 1978, Definitions, filed 2/28/90.

TRD MVC 5-57:1, Regulation Pertaining to the New Mexico Commercial Driver's License Act, Section 66-5-57 NMSA 1978, Notification by Driver to the Division, filed 2/28/90.

18.19.5.118 NMAC, Instruction Permit-Purpose-Criteria

TRD MVC 5-60:1&2, Regulations Pertaining to the New Mexico Commercial Driver's License Act, Section 66-5-60 NMSA 1978, Commercial Driver's License - Qualifications - Standards, filed 2/28/90.

TRD MVC 5-65:1-5, Regulations Pertaining to the New Mexico Commercial Driver's License Act, Section 66-5-65 NMSA 1978, Classifications - Endorsements - Restrictions, filed 2/28/90.

TRD MVC 5-68:1-4, Regulations Pertaining to the New Mexico Commercial Driver's License Act, Section 66-5-68 NMSA 1978, Disqualifications - Cancellations, filed 2/28/90.

TRD MVC 5-70:1&2, Regulation Pertaining to the New Mexico Commercial Driver's License Act, Section 66-5-70 NMSA 1978, Reciprocity, filed 2/28/90.

TRD MVC 5-35:1&2, Regulation Pertaining to the Motor Vehicle Code, Section 66-5-35 NMSA 1978, Limited Driver's License - Purpose, Criteria, Application, Hearing, filed 7/20/90.

TRD MVC 5-19:2, Regulation Pertaining to the Motor Vehicle Code, Section 66-5-19 NMSA 1978, MVC 5-19:2 - Restricted License Intrastate Commercial Driving, filed 3/16/92.

TRD MVC 5-93, Regulations Pertaining to the Motor Vehicle Code, Article 5, Chapter 66 NMSA 1978, filed 8/20/93.

History of Repealed Material:

MVD 78-3, New Mexico Uniform Traffic Ordinance 1978, filed 11/6/78 - Repealed 5/31/2000.



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NEWS RELEASE

For Immediate Release: November 4, 2009

Public Hearing Set for PED Rule That Ties 8th Grade Student Proficiency and 9th Grade School Attendance to New Mexico Driving Instruction Permits

SANTA FE – The Public Education Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on December 14, 2009, from 10 a.m. to 12:00 p.m. The Department is canceling the previously noticed public hearing that was scheduled for November 18, 2009.

The purpose of the rescheduled public hearing will be to obtain input on the PED rule that ties a student's academic proficiency in math and reading and school attendance to whether that student may receive a New Mexico driving instruction permit. The related New Mexico Motor Vehicle Division (MVD) rule can be found at: <http://www.nmcpr.state.nm.us/nmac/parts/title18/18.019.0005.pdf> The applicable language pertaining to students receiving driving instruction permit is contained in Section 18.19.5.118 ("Instruction Permit") on pages 19 and 20 of the MVD rule.

Under the MVD's rule, driving instruction permits can be requested between the ages 15 through 17. Although this rule will go into effect on December 31, 2009, the requirements for meeting proficiency and attendance will only apply to those minors submitting applications to the MVD for driving instruction permits on or after September 1, 2011.

However, because the proposed rule looks at academic proficiency in the 8th grade, this requirement could apply to students who are currently in the 8th grade during the 2009-2010 school year and who later request a driving instruction permit on or after September 1, 2011. Additionally, because the rule also requires meeting a 90% attendance rate in the 9th grade, this requirement will first apply to students in the 9th grade in the 2010-2011 school year who then request a driving instruction permit on or after September 1, 2011.

To repeat, this proposed rule does not apply to any minor student requesting an instruction permit at any time prior to September 1, 2011. The proposed rule describes how proficiency and attendance can be demonstrated and verified.

Proposed Rule Number	Proposed Rule Name	Proposed Action
6.30.11 NMAC	ACADEMIC PROFICIENCY AND ATTENDANCE TIED TO INSTRUCTION PERMITS	Adopt new rule to establish requirements effective on 9/1/2011 for demonstrating 8th grade math & reading proficiency and meeting school attendance standards prior to receiving an MVD driving instruction permit.

Interested individuals may testify at the public hearing and/or submit written comments regarding the proposed rulemaking to Willie Brown, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786; email: (Willie.Brown1@state.nm.us) (505) 827-6641 (telefax (505) 827-6681).

Written comments must be received no later than 5:00 pm on December 14, 2009. However, the submission of written comments as soon as possible is encouraged.

The proposed rule may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Willie Brown, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (Willie.Brown1@state.nm.us) (505) 827-6641 (telefax (505) 827-6681). The proposed rule will be made available at least thirty days prior to the hearing.

INDIVIDUALS WITH DISABILITIES WHO REQUIRE THIS INFORMATION IN AN ALTERNATIVE FORMAT OR NEED ANY FORM OF AUXILIARY AID TO ATTEND OR PARTICIPATE IN THE PUBLIC HEARING ARE ASKED TO CONTACT WILLIE BROWN AS SOON AS POSSIBLE, AT (505) 827-6641). THE DEPARTMENT REQUESTS AT LEAST TEN (10) DAYS ADVANCE NOTICE TO PROVIDE REQUESTED SPECIAL ACCOMMODATIONS.

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