



Date: November 16, 2018

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Notice of Proposed Rulemaking (NPRM): 6.61.9 NMAC,  
Certificates of Endorsement Waiver

### Proposed Rule Abstract

1. **Agency:** Public Education Department
2. **Rule Citation:** 6.61.9 NMAC, Certificates of Endorsement Waiver
3. **Rulemaking Action:** Repeal and Replace
4. **Register Issue and Date of Notice of Proposed Rulemaking:** Volume 29, Issue 15, August 14, 2018
5. **Effective Date:** November 13, 2018
6. **Citation to Specific Legal Authority:** Sections 22-2-1, 22-2-2, and 22-10A-14 NMSA 1978
7. **Short Explanation of the Rule's Purpose:** To update the requirements for seeking an endorsement waiver, renewing an endorsement waiver, and requesting department review of a denied endorsement waiver.
8. **Link to Full Text of the Rule:** <http://164.64.110.134/nmac/nmregister/xxix/6.61.9.html>
9. **How Information on the Rule Can Be Obtained:** <https://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>
10. **Comment Period and Deadlines:** August 14, 2018 to September 19, 2018 at 5:00 p.m. Written comments may be submitted to the Policy Division, New Mexico Public Education Department, Room 101, 300 Don Gaspar Avenue, Santa Fe, NM 87501, [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), or by fax to (505) 827-6520
11. **Rule Hearing:** September 19, 2018 from 9:00 a.m. to 11:00 a.m. at 300 Don Gaspar Avenue in Mabry Hall, Santa Fe, NM 87501
12. **Link to Permanent Agency Rulemaking Record:** [http://statenm.force.com/public/SSP\\_RuleHearingSearchPublic](http://statenm.force.com/public/SSP_RuleHearingSearchPublic)

### Adopted Rule Update

1. **Register Issue and Date of Adopted Rule:** Volume 29, Issue 21, November 13, 2018
2. **Date Notice of Proposed Rulemaking Was Reported to the Committee:** September 27, 2018
3. **Link to Proposed Rule Report:** <https://www.nmlegis.gov/handouts/ALESC%20092618%20Item%207%20A.3%20-%20PROPOSED%20RULE%20Certificates%20of%20Endorsement%20Waiver%20Rulemaking.pdf>
4. **Minor, Non-Substantive Changes from the Rule as Proposed:** Other than minor wording changes, a subsection was added to Section 6.61.9.8 NMAC limiting endorsement waivers in mathematics, language arts, science and social studies to individuals with a secondary teaching license for seventh through 12th grade, a middle level license for fifth through ninth grade, and a license for prekindergarten through 12th grade. These endorsement waivers will not be available to teachers who hold a birth through prekindergarten license, a prekindergarten through third grade license, an elementary license for kindergarten through eighth grade, a secondary vocational-technical license, and a special education license. See **Attachment 1, 6.61.9 NMAC, Certificates of Endorsement Waiver Adopted Rule.**

## Summary of Proposed Rule

The August 14, 2018 issue of the *New Mexico Register* contained a Notice of Proposed Rulemaking to repeal and replace the current rule that establishes the requirements for seeking an endorsement waiver, renewing an endorsement waiver, and requesting Public Education Department (PED) review of a denied endorsement waiver. The proposed rule also defines which endorsements qualify for a waiver application.

## Analysis

The proposed rule maintains much of the waiver process required by the current rule, but with greater brevity. When local educational agencies (LEAs) apply to PED for an endorsement waiver, they will have to submit documentation within 60 days of the start date of the employee's contract, demonstrating the employee is filling a vacancy that has remained unfilled through no fault of the LEA.

### Charter Schools and School Districts with Highest Percent EL Population

FY 18

Location	Number of EL Students	Overall Student Population	Percent EL Population
Dream Dine	18	24	72%
La Promesa Early Learning	224	377	59%
Walatowa Charter High	26	56	46%
DEAP	11	23	46%
Hatch Valley Public Schools	507	1,268	40%
Academy of Trades and Tech	46	123	37%
Anthony Charter School	39	107	37%
Gadsden Independent Schools	4,607	13,407	34%
La Resolana Leadership	23	66	34%
Deming Public Schools	1,827	5,381	34%

Source: PED

The LEA and employee must then also submit a detailed plan for the new employee's completion of the endorsement requirements to PED. The certificate of endorsement waiver will then be issued for up to one year. Essentially, the proposed rule leaves the actual waiver process unchanged.

Under the proposed rule some endorsements will no longer be eligible for a waiver including teaching English to speakers of other languages (TESOL), bilingual education, and modern or classical languages. TESOL changes may impact schools across the state, as a TESOL endorsement is required for teachers who serve students who are classified as English learners (EL). Schools already struggle to staff these positions and this proposed change will likely impact schools with a high EL population. This proposed change could result in more long term substitutes in TESOL positions, as there aren't as stringent requirements for long term substitutes to serve EL students.

### School Districts with Highest Number of EL Students

FY 18

School District	Number of EL Students	Overall Student Population	Percent EL Population
Albuquerque Public Schools	13,451	89,770	15%
Gadsden Independent Schools	4,607	13,407	34%
Gallup-McKinley County Schools	3,086	11,399	27%
Las Cruces Public Schools	2,833	24,694	11%
Santa Fe Public Schools	2,786	13,087	21%

Source: PED



The proposed rule also requires PED to consider a waiver candidate's NMTEACH effectiveness rating when determining whether to approve or deny a waiver request. Further, the proposed rule also prohibits a waiver from being approved if the candidate's effectiveness rating from the prior year was ineffective or minimally effective.



## New Mexico Register / Volume XXIX, Issue 21 / November 13, 2018

**TITLE 6 PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 61 SCHOOL PERSONNEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCTORS**  
**PART 9 CERTIFICATES OF ENDORSEMENT WAIVER**

**6.61.9.1 ISSUING AGENCY:** Public Education Department (PED), hereinafter the department.  
 [6.61.9.1 NMAC - Rp, 6.61.9.1 NMAC, 11/13/2018]

**6.61.9.2 SCOPE:** This rule governs the requirements for the issuance and duration of endorsement waivers to those individuals who do not meet the requirements for endorsements as required for providing instructional services in certain areas.  
 [6.61.9.2 NMAC - Rp, 6.61.9.2 NMAC, 11/13/2018]

**6.61.9.3 STATUTORY AUTHORITY:** Sections 22-2-1, 22-2-2, and 22-10A-14, NMSA 1978  
 [6.61.9.3 NMAC - Rp, 6.61.9.3 NMAC, 11/13/2018]

**6.61.9.4 DURATION:** Permanent.  
 [6.61.9.4 NMAC - Rp, 6.61.9.4 NMAC, 11/13/2018]

**6.61.9.5 EFFECTIVE DATE:** November 13, 2018, unless a later date is cited in the history note at the end of a section.  
 [6.61.9.5 NMAC - Rp, 6.61.9.5 NMAC, 11/13/2018]

**6.61.9.6 OBJECTIVE:** This rule establishes the process and requirements for school districts, state-chartered charter schools, and state institutions to request and receive endorsement waivers.  
 [6.61.9.6 NMAC - Rp, 6.61.9.6 NMAC, 11/13/2018]

**6.61.9.7 DEFINITIONS: [RESERVED]**  
 [6.61.9.7 NMAC - Rp, 6.61.9.7 NMAC, 11/13/2018]

**6.61.9.8 REQUIREMENTS FOR INITIAL ENDORSEMENT WAIVER REQUESTS:**

**A.** Endorsement waivers shall:

- (1) be authorized by the department, in writing;
- (2) permit a superintendent, state-charter administrator, or governing authority of a state institution to fill an existing licensed teaching position in a public school or state institution with an individual holding a standard license who does not hold the specific endorsement required for that position; and
- (3) be issued for up to one school year.

**B.** Endorsement waivers may be requested in the following areas:

- (1) agriculture;
- (2) business education;
- (3) family and consumer sciences;
- (4) gifted education;
- (5) health;
- (6) information tech coordinator;
- (7) language arts;
- (8) library media;
- (9) mathematics;
- (10) performing arts;
- (11) physical education;
- (12) psychology;
- (13) reading;
- (14) science;
- (15) social studies;
- (16) technology education; and
- (17) visual arts.

**C.** Endorsement waivers in mathematics, language arts, science, and social studies shall be limited to individuals with teaching licensure in secondary education, grades 7 - 12; middle level licensure, grade 5 - 9; and licensure for grades pre-K - 12.

**D.** Requests for endorsement waivers shall:

- (1) be based on an emergency in which, due to circumstances beyond the control of the district, state-chartered charter school, or state institution, and as determined by the department, a vacancy exists in a teaching position requiring an endorsement listed in

Subsection A of 6.61.9.8 NMAC that must be filled immediately or as soon as practicable to avoid a deterioration of significant services;

- (2) be submitted within 60 calendar days of the beginning date of the endorsement waiver candidate's employment contract with the district, state-chartered charter school, or state institution;
- (3) include documentation of unsuccessful recruitment efforts to fill the vacant position including the methods used and the dates and duration of efforts;
- (4) demonstrate that the request has been made with the knowledge and consent of the candidate for the endorsement waiver;
- (5) include documentation of the candidate's degree and coursework taken; and
- (6) include a detailed plan completed and signed by the candidate identifying how they will gain the needed endorsements, including the completion at least nine college credit hours within one school year.

[6.61.9.8 NMAC - Rp, 6.61.9.8 NMAC, 11/13/2018]

**6.61.9.9 REVIEW OF INITIAL ENDORSEMENT WAIVER REQUESTS:**

**A.** The department shall review all requests for endorsement waivers within 60 calendar days of receipt. Waiver requests shall be valid for one school year unless granted renewal according to the terms stated in 6.61.9.11 NMAC.

- (1) Approved waivers shall detail the conditions under which the waiver has been approved.
- (2) Denied waivers shall state the reasons for the denial and shall provide details regarding the right of the district, state-chartered charter school, or state institution to request a review or appeal.

**B.** The department shall consider the following criteria when determining whether to approve or deny an endorsement waiver request:

- (1) whether the candidate's plan for gaining the endorsement meets the criteria defined in Subsection C of 6.61.9.8 NMAC;
- (2) the waiver history of the candidate;
- (3) whether the degree and coursework taken by the endorsement waiver candidate could later qualify the candidate to receive an endorsement in the area requested;
- (4) whether the candidate will be reasonably capable of completing required coursework or passing required content tests for the waiver; and
- (5) the NMTEACH effectiveness rating of the waiver candidate.

**C.** Endorsement waivers shall not be approved if:

- (1) the waiver request does not have the written consent of the candidate;
- (2) the request is for endorsements in teaching English to speakers of other languages, bilingual education, or modern and classical languages pursuant to Subsection F of 6.32.2.10 NMAC; or
- (3) the candidate's NMTEACH effectiveness rating from the prior year is ineffective or minimally effective.

**D.** The department may deny a request for an endorsement waiver for the following reason:

- (1) the candidate's degree or college coursework is too far removed from the focus area of the endorsement waiver;
- (2) the application is submitted without supporting documentation or a certification attesting to the specific methods, dates, and duration of recruitment efforts;
- (3) the candidate has held an endorsement waiver for more than three years, whether consecutive or not;
- (4) the candidate has previously been issued an endorsement waiver and has failed to comply with the conditions of the department, including taking and passing required assessments; or
- (5) the request is submitted beyond the 60-day deadline without demonstrating good cause for the delay.

[6.61.9.9 NMAC - Rp, 6.61.9.9 NMAC, 11/13/2018]

**6.61.9.10 RENEWAL OF AN ENDORSEMENT WAIVER:** Endorsement waivers may be renewed if evidence of enrollment in or pending completion of required coursework and testing requirements is provided. It shall be the sole responsibility of the district, state-chartered charter school, or state institution to submit this documentary evidence to the department's licensure bureau.

**A.** Requests for the renewal of an endorsement waiver shall:

- (1) be submitted by the superintendent, state-chartered charter school administrator, or the governing authority of a state institution, on a department-approved form;
- (2) document all courses completed and exams taken by the candidate in the prior school year;
- (3) demonstrate the candidate's compliance with all conditions required by the department for issuance of an endorsement waiver in the prior school year; and
- (4) contain a detailed plan for completion of endorsement requirements within the current school year by the educator.

**B.** Endorsement renewals shall not be approved if:

- (1) the candidate does not consent to providing the instructional services required of the position for which the waiver is being sought;
- (2) prior non-use of an endorsement waiver is used as the reason for renewing the waiver; or
- (3) the request for renewal does not comply with the requirements of 6.61.9.8 NMAC.

**C.** Endorsement renewals may not be approved if the candidate fails to complete and earn credit for college coursework to obtain the requisite credentials or obtain the degree required for the endorsement without good cause as determined by the department.

**D.** Provided that the holder of an endorsement waiver has complied with all conditions for the issuance of an endorsement imposed during the preceding school year, there shall be no need for the public school or state institution to reestablish the existence of an emergency. [6.61.9.10 NMAC - Rp, 6.61.9.10 NMAC, 11/13/2018]

**6.61.9.11 REQUESTS FOR REVIEW OF DENIED WAIVERS:**

**A.** Candidates with a denied waiver, denied waiver renewal, or a waiver under review shall not provide instructional services in the classroom for which the endorsement waiver is being sought unless the candidate also has a valid substitute certificate and is performing services as a substitute teacher pursuant to Section 22-0A-15 NMSA 1978 and 6.63.10 NMAC.

**B.** Requests for review of a denied initial endorsement waiver shall:

- (1) be in writing;
- (2) be addressed to and received by the director of the department's licensure bureau within 30 calendar days of receipt of the denial by the district, state-chartered charter school, or state institution;
- (3) contain a statement of reasons why the endorsement waiver should be issued;
- (4) document the candidate's progress to-date toward completion of the required coursework and tests necessary to obtain the endorsement and what steps will be taken to fulfill said requirements within the duration of the endorsement waiver.

**C.** Requests for review of a denied renewal endorsement waiver shall:

- (1) be in writing;
- (2) be addressed to and received by the director of the department's licensure bureau within 30 calendar days of receipt of the denial by the district, state-chartered charter school, or state institution;
- (3) contain a statement of reasons why the endorsement waiver should be renewed; and
- (4) provide documentation justifying the reasons for the candidate's failure to satisfy the requirements for issuance of an endorsement during the preceding school year.

**D.** After review of a denied waiver, the decision of the department shall be communicated as soon as practicable. The decision of the department shall constitute a final agency decision and may be appealed pursuant to a district court in accordance with applicable law. [6.61.9.11 NMAC - Rp, 6.61.9.11 NMAC, 11/13/2018]

**HISTORY OF 6.61.9 NMAC:**

**History of Repealed Material:**

6.61.9 NMAC, Certificates of Waiver, filed 7-2-2001 - Repealed effective 10/31/2007.

6.61.9 NMAC, Certificates of Waiver, filed 10/31/2007 was repealed and replaced by 6.61.9 NMAC - Certificates of Waiver, effective 11/13/2018.