November 21, 2019

## **MEMORANDUM**

TO: Representative Christine Trujillo, Chair, Senator Mimi Stewart, Vice Chair, and LESC members

FR: Nicolas Kennedy, Fiscal Analyst, LESC

**RE:** 6.30.3 NMAC, Eligibility for the High School Equivalency Assessments or Programs and Diploma in NM

The November 12, 2019 issue of the New Mexico Register contained the Public Education Department's (PED) proposed repeal of, 6.30.3 NMAC, "Eligibility for the General Educational Development Tests (GED Tests) and Diploma in NM" and replacement with 6.30.3 NMAC, "Eligibility for the High School Equivalency Assessments or Programs and Diploma in NM." See Attachment 1, 6.30.3 NMAC, Eligibility for the General Educational Development Tests (GED Tests) and Diploma in NM (strikethrough) and Attachment 2, Proposed Rule 6.30.3, Eligibility for the High School Equivalency Assessments or Programs and Diploma in NM. The proposed rule determines who is eligible to complete a high school equivalency credential or program, defines a procedure for issuing high school equivalency credentials and PED-issued New Mexico high school diplomas, and establishes criteria for qualified high school equivalency publishers or program providers.

## Statutory Authority

- PED cites the following sections of statute as authority for the proposed rulemaking:
  - Section 22-1-9.2 NMSA 1978, which directs the department to authorize a diploma program that results in a diploma awarded by the department for adults who have not graduated from high school. See **Attachment 3**, Section 22-1-9.2 NMSA 1978: Department-Issued Diplomas.
  - Sections 22-2-1 and 22-2-2 NMSA 1978, which grant the department general rulemaking authority.
  - Sections 22-2-8.8 and 22-2-8.14 NMSA 1978, which require the department to issue a high school equivalency credential to any candidate at least 16 years of age who has successfully completed the high school equivalency credential tests, and require the department to include student identification numbers on high school equivalency credentials issued by the department.
  - o Section 22-12A-4 NMSA 1978, which establishes school attendance requirements.
  - Section 22-13-1.1 NMSA 1978, which sets forth graduation requirements.
  - Section 43-1-3 NMSA 1978, which defines "habilitation" for department of health clients with developmental disabilities to include structured education.

## Substantive Issues

• Section 22-1-9.2 NMSA 1978 intended a PED-issued diploma to be a separate pathway for adults who have not graduated from high school. The proposed rule makes a PED-issued diploma a potential outcome of high school equivalency programs and makes individuals who are 16 years old or 17 years old eligible for a PED-issued diploma. The proposed rule states that individuals who are at least 16 years old and who successfully complete a high school equivalency credential assessment or program "will receive the high school equivalency credential or a department-issued New Mexico high school diploma." This section does not clearly differentiate these

outcomes and suggests there will not be separate and more rigorous requirements to obtain a department-issued high school diploma.

- PED should create two separate sets of criteria in the proposed rule, one for high school equivalency credentials and one for PED-issued diplomas for adults. PED should also include separate definitions for "high school equivalency credential assessments or programs" and "department-issued diploma assessments or programs."
- The proposed rule includes no language from Section 22-1-9.2 NMSA 1978, though the statute includes criteria for department-issued diplomas not reflected in the proposed rule.
- Neither the proposed rule nor Section 22-1-9.2 NMSA 1978 requires a PED-issued diploma to be aligned with statutory graduation requirements. The Legislature may want to consider amending Section 22-1-9.2 NMSA 1978 to require any PED-issued diploma to reflect state graduation requirements.

## Technical Issues

- The phrase "the high school equivalency assessment or program" in subsection D of section 6.30.3.7 implies that there is only one high school equivalency assessment or program.
- Subsection B of section 6.30.3.8 refers to "New Mexico school attendance law" and "attendance forms" but does not explicitly identify a statutory section or which forms students must complete.
- PED cites Section 22-2-8.14 NMSA 1978, which requires PED to include student identification numbers on high school equivalency credentials, as statutory authority for the proposed rule, but does not address this topic in the proposed rule.

#### **Responsibilities**

- The proposed rule would require PED to convene a review committee composed of PED staff, the Higher Education Department high school equivalency administrator, and staff from the Adult Education Division of the Higher Education Department to evaluate high school equivalency publisher or program provider applications and make a determination as to whether to approve applications.
- Institutions that want to become a qualified high school equivalency publisher or program provider would be required to submit an application to PED. The application must demonstrate that the applying institution administers a high school equivalency credential assessment or program that meets the standards of the college and career readiness division of the U.S. Department of Education and is comparable to all college and career readiness standards established by the state of New Mexico. Applying institutions must also demonstrate that they will issue a transcript acceptable for college admissions and applications.
- Excepting the new responsibilities described above, the proposed rule does not appear to substantially alter existing high school equivalency credential practices. The proposed rule no longer specifically refers to the General Educational Development (GED) tests. This change is consistent with statutory changes made in 2014 to Section 22-2-8.8 NMSA 1978 to remove references to the GED, which is a proprietary test.
- Information on the rule can be obtained from the New Mexico Public Education Department, 300 Don Gaspar Avenue, Room 101, Santa Fe, NM 87501 or at <u>rule.feedback@state.nm.us</u>. The comment period for the rule extends through December 16, 2019 at 5:00 PM. The public rule hearing will be conducted December 16, 2019 from 10:00am to 12:00pm in Mabry Hall, located at the Jerry Apodaca Education Building, 300 Don Gaspar Avenue, Santa Fe, NM 87501.

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS **ELIGIBILITY FOR THE GENERAL EDUCATIONAL DEVELOPMENT TESTS** PART 3 6.30.3.1 ISSUING AGENCY: Public Education Department [01 01 97, 07 30 99; 6.30.3.1 NMAC Rn, 6 NMAC 3.4.1.1, 05 31 01; A, 11 13 09] 6.30.3.2 SCOPE: All official general educational development ("GED") testing centers, public schools, private schools, and individuals seeking to take the GED test in New Mexico. [01 01 97, 07 30 99; 6.30.3.2 NMAC Rn, 6 NMAC 3.4.1.2, 05 31 01; A, 07 15 02] 6.30.3.3 **STATUTORY AUTHORITY:** This rule is being promulgated pursuant to Sections 22-2-1-22-2 2, 22 2 8.8, 22 2 8.14, 22 12 2, 22 12 4, 22 13 1.1 and 43 1 3, New Mexico Statutes Annotated, 1978 Compilation. [01 01 97, 07 30 99; 6.30.3.3 NMAC Rn, 6 NMAC 3.4.1.3, 05 31 01; A, 07 15 02; A, 11 13 09] 6.30.3.4 **DURATION:** Permanent. [01 01 97, 07 30 99; 6.30.3.4 NMAC Rn, 6 NMAC 3.4.1.4, 05 31 01] 6.30.3.5 EFFECTIVE DATE: July 30, 1999, unless a later date is cited at the end of a section or paragraph 101 01 97, 07 30 99; 6.30.3.5 NMAC Rn, 6 NMAC 3.4.1.5. 05 31 011 **6.30.3.6 OBJECTIVE:** To enable individuals who are unable to graduate from high school the opportunity to demonstrate developed abilities normally acquired through completion of a high school program and thereby earn a credential equivalent to a high school diploma. [01 01 97, 07 30 99; 6.30.3.6 NMAC Rn, 6 NMAC 3.4.1.6, 05 31 01; A, 07 15 02] **DEFINITIONS:** 6.30.3.7 "Credential equivalent to a high school diploma" means a New Mexico high school diploma Δ which is issued upon satisfactory passage of the GED. "Department" means the public education department. B. C. "GED" means the general educational development test which is a group of rigorous tests administered at designated testing centers that measure high school level skills and knowledge and result in the issuance of a New Mexico high school diploma to the examinee when passed. "Secretary" means the secretary of the New Mexico public education department. D. F "State superintendent" means the state superintendent of public instruction who, until September 23, 2003, when Article 12, Section 6 of the New Mexico Constitution was amended, was the chief administrative officer of the state board of education and also supervised and directed the operation of the state department of public education. "Superintendent" means the chief executive officer of a school district or a charter school. F [6.30.3.7 NMAC N, 11 13 09] **TESTING ELIGIBILITY AND USE OF THE UNDERAGE FORM:** 6.30.3.8 Any individual whether or not a New Mexico resident who is at least 16 years of age, has not A.\_\_\_ graduated from an accredited high school and is not currently enrolled in an accredited high school is eligible to take the GED tests. B. Any individual who seeks to withdraw from public school and take the GED before their 18th birthday will not be permitted to take the GED unless that individual: (1) produces a signed letter of hardship from their parent or guardian that describes the reason for withdrawing from school prior to attaining 18 which must be by reason of a verifiable hardship; (2) obtains written approval from that individual's superintendent or superintendent's designee to withdraw from school based upon the letter of hardship and attached supporting document required by Paragraph (3) of Subsection B of 6.30.3.8 NMAC;

(3) attaches documents obtained from that individual's parent or guardian supporting one of the following categories of hardship justifying the individual's need to withdraw from school:

(a) medical reasons (e.g., physical or psychological);

(b) the necessity to work to support self or family by reason of death or serious illness of a parent, guardian or family member that resulted in a financial hardship;

(c) any other reason deemed persuasive and appropriate by the local superintendent.
(4) a student whose parents or guardians have provided notice to the department of their having established a home school for that student.

C. An individual 16 or 17 years of age enrolled in a school district or charter school who seeks to withdraw from school and take the GED test, must obtain and present to the local GED chief or alternate examiner a department underage form:

(1) completed by the local superintendent or superintendent's designee authorizing the testing;
(2) executed in triplicate and containing the individual's birth date, date of withdrawal from school, and signature from the parent or legal guardian;

(3) a signed copy of which department form shall be kept by the local school district or charter school, a signed copy of which shall be kept by the local GED chief or alternate examiner, and the remaining signed copy of which shall be forwarded with the examinee's passing test scores to the department's GED testing office.

D. Individuals detained at a New Mexico juvenile correctional institution or a juvenile justice division facility operated by the children youth and family department, will be permitted to take the GED tests at age 16 or 17 only when they request and receive a written approval to take the tests from the warden, director or educational director of that institution or facility. Such individuals will receive the New Mexico high school diploma upon successful completion of the GED tests. No other consent to take the GED tests is required.

E. An individual enrolled in a state institution under the authority of the secretary of the health department will be permitted to take the GED tests at age 16 or 17 only when they request and receive a written approval to take the tests from the director of the facility where the examinee is enrolled or from the educational director of that facility. No other consent to take the GED tests is required.

F. Individuals enrolled in any other state institution will be permitted to take the GED tests at age 16 or 17 only when they request and receive a written approval to take the tests from the director of the facility where the examinee is enrolled or from the educational director of that facility. No other consent to take the GED tests is required.

G. Proper identification in the form of a state or other government issued picture ID such as a driver's license, passport, state identification card, must be presented to the GED chief or alternate examiner before testing may begin in order to determine identity, date of birth, and residency (residency must be established in order to determine the proper state for release and forwarding of the GED test scores to the state of

residency). Additionally, the identification submitted by an applicant must verify either their signature or their social security number.

H. A home school student of age 16 or 17 seeking to take the GED tests shall obtain and present to the GED testing center examiner an underage form signed by the student's parent or guardian verifying that a home school notification and establishment form concerning that student has been filed with the department pursuant to 6.81.3 NMAC and Section 22-2.1 NMSA 1978.

I. 16 or 17 year old nonresidents seeking to take GED tests in New Mexico must produce hardship documentation and duly signed underage forms as required in this section.

J. A GED examinee is permitted to take the GED tests no more than three times in a calendar year and such scores attained shall be valid for three years from the initial date of testing. If the examinee fails to pass the GED tests within the three year period, the scores will be considered invalid and the examinee must start the GED testing all over.

K. GED examinees taking the Spanish language version shall not be required to take the English as a second language or ESL test in order to receive a New Mexico high school diploma. [03 03 81, 07 20 93, 01 01 97, 07 30 99; 6.30.3.8 NMAC Rn, 6 NMAC 3.4.1.8, 05 31 01; A, 07 15 02; A, 11 13-09]

#### 6.30.3.9 PASSING SCORES AND ISSUANCE OF HIGH SCHOOL DIPLOMAS: A. Upon successful completion of the GED tests, GED test scores will be released in accordance with the current GED examiners manual. Successful completion is defined as:

(1) obtaining a minimum standard score of 410 on each test in the battery, and

(2) obtaining an average standard score of at least 450 on the tests in the battery for a minimum total score of 2250.

B. The local chief or alternate examiner will send the individual an official report of scores he/she attained on the GED tests.

C. A New Mexico resident who has successfully passed the GED tests and is at least 16 years of age will receive the New Mexico high school diploma issued by the secretary through the department's GED testing office. Only New Mexico residents who have successfully passed the GED tests will be eligible to receive the New Mexico high school diploma. Residents of other states will have their GED test scores forwarded to their state of residency.

D. A New Mexico resident who has passed the GED tests and has also met the requirements for a local high school diploma will receive the local high school diploma instead of the New Mexico high school diploma issued by the secretary through the department's GED testing office.

E. Except for a school age person who is detained or enrolled in a state institution, a New Mexico resident who has passed the GED tests and has received a GED certificate, may as permitted by law enroll in any public school in New Mexico for the purpose of obtaining a school district or charter school issued high school diploma, provided the examinee has not yet attained the age of 21. Pursuant to Subsection E of 6.30.3 NMAC, the enrollment exception contained in this subsection shall not apply to a person enrolled in a state institution under the authority of the secretary of health.

F. Any school age individual who is a "client" as defined in Section 43–1–3 NMSA 1978 and is in a state institution under the authority of the secretary of the health department, shall have a right to attend public school in the school district in which the client is located if:

(1) the school age person has been recommended for placement in a public school by the educational appraisal and review committee of the district in which the institution is located; or

(2) the school age person has been recommended for placement in a public school as a result of the appeal process as provided in the special education rules of the department.

G. A secretary issued New Mexico high school diploma awarded by reason of an individual having obtained passing scores on the GED tests shall be equivalent to a high school diploma or a New Mexico diploma of excellence issued by a school district pursuant to Section 22-13.1.1 NMSA 1978.

H. In those instances in which an individual received a passing GED score prior to September 23, 2003, duplicate New Mexico high school diplomas will continue to be issued by the state superintendent and not the secretary.

I. Any student identification number issued to a public school student shall be included on all GED certificates issued by the department.

[01 31 72, 06 12 73, 01 11 78, 03 03 81, 07 20 93, 01 01 97, 07 30 99; 6.30.3.9 NMAC Rn, 6 NMAC 3.4.1.9, 05 31 01; A, 07 15 02; A, 11 13 09]

HISTORY OF 6.30.3 NMAC:

**PRE-NMAC HISTORY:** The material in this regulation is derived from that previously filed with the State Records Center and Archives under:

SDE Regulation 71–21, Minimum Age Requirement for G.E.D. Test Administration in New Mexico, filed January 31, 1972;

SDE Regulation 73-20, Regulation Governing Minimum Age Requirement for G.E.D. Test Administration in New Mexico, filed June 12, 1973; and

State Board of Education Regulation 80 12, eligibility for the G.E.D. Exam and Diploma in New Mexico, filed March 3, 1981.

# TITLE 6PRIMARY AND SECONDARY EDUCATIONCHAPTER 30EDUCATIONAL STANDARDS - GENERAL REQUIREMENTSPART 3ELIGIBILITY FOR THE HIGH SCHOOL EQUIVALENCY ASSESSMENTS OR<br/>PROGRAMS AND DIPLOMA IN NM

**6.30.3.1 ISSUING AGENCY:** Public Education Department, hereinafter the department. [6.30.3.1 NMAC - Rp, 6.30.3.1 NMAC, 12/31/2019]

**6.30.3.2 SCOPE:** All individuals seeking to obtain a high school equivalency credential or departmentissued New Mexico high school diploma and all publishers or program providers who seek to become qualified in the state of New Mexico to administer high school equivalency assessments or programs. [6.30.3.2 NMAC - Rp, 6.30.3.2 NMAC, 12/31/2019]

**6.30.3.3 STATUTORY AUTHORITY:** This rule is being promulgated pursuant to Sections 22-1-9.2, 22-2-1, 22-2-2, 22-2-8.8, 22-2-8.14, 22-12A-4, 22-13-1.1, and 43-1-3 NMSA 1978. [6.30.3.3 NMAC - Rp, 6.30.3.3 NMAC, 12/31/2019]

**6.30.3.4 DURATION:** Permanent.

[6.30.3.4 NMAC - Rp, 6.30.3.4 NMAC, 12/31/2019]

**6.30.3.5 EFFECTIVE DATE:** December 31, 2019, unless a later date is cited at the end of a section or paragraph.

[6.30.3.5 NMAC - Rp, 6.30.3.5 NMAC, 12/31/2019]

**6.30.3.6 OBJECTIVE:** To give individuals who have not graduated from high school the opportunity to earn a high school equivalency credential or department-issued New Mexico high school diploma. To establish criteria for a high school equivalency publisher or program provider to become qualified to administer a high school equivalency credential assessment or program in the state of New Mexico. [6.30.3.6 NMAC - Rp, 6.30.3.6 NMAC, 12/31/2019]

#### 6.30.3.7 DEFINITIONS:

**A. "High school equivalency administrator"** means an office within the New Mexico higher education department that coordinates activities related to high school equivalency credentials and high school equivalency assessments and programs.

**B. "High school equivalency credential"** means a credential issued by the department, its designee, or a qualified publisher or program to any candidate who is at least 16 years of age and who has successfully completed a high school equivalency assessment or program.

**C. "High school equivalency credential assessment or program"** means an assessment or program administered by a qualified high school equivalency publisher or program provider.

**D.** "Qualified high school equivalency publisher or program provider" or "qualified publisher or program provider" means a publisher or program provider that has been approved by the department to administer the high school equivalency assessment or program in the state of New Mexico.

**E.** "Secretary" means the secretary of the department. 162027 NMAC Pr = 62027 NMAC 12/21/20101

[6.30.3.7 NMAC - Rp, 6.30.3.7 NMAC, 12/31/2019]

#### 6.30.3.8 TESTING ELIGIBILITY AND USE OF THE UNDERAGE FORM:

**A.** Any individual, whether or not a New Mexico resident, who is at least 16 years of age, has not graduated from an accredited high school, and is not currently enrolled in an accredited high school is eligible to take a high school equivalency credential assessment or program, administered by a qualified publisher or program provider.

**B.** Any individual who seeks to withdraw from public school and complete a high school equivalency credential assessment or program before their 18th birthday shall not be permitted to begin a high school equivalency credential assessment or program unless that individual can demonstrate compliance with the New Mexico school attendance law. The individual seeking to complete a high school equivalency assessment or program shall complete attendance forms, as required by the department, and obtain all necessary signatures. The individual shall file copies of the completed forms with the following entities:

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the school district that provides the necessary signatures; and (1)

the qualified publisher or program provider through which the individual seeks to obtain (2) the high school equivalency credential.

С. Individuals detained at a New Mexico juvenile correctional institution or a juvenile justice division facility operated by the New Mexico children, youth & families department, shall be permitted to take a high school equivalency credential assessment or program at age 16 or 17 only when the individual requests and receives written approval to take the high school equivalency credential assessment or participate in the high school equivalency credential program from the warden, director, or educational director of that institution or facility. Such individuals shall receive the department-issued New Mexico high school diploma upon successful completion of a high school equivalency credential assessment or program. No other consent to take a high school equivalency credential assessment or program is required.

D. An individual enrolled in a state institution under the authority of the secretary of the department of health shall be permitted to take a high school equivalency credential assessment or program at age 16 or 17 only when the individual requests and receives written approval to take the high school equivalency credential assessment or participate in the high school equivalency credential program from the director of the facility where the individual is enrolled or from the educational director of that institution. Such individuals shall receive the department-issued New Mexico high school diploma upon successful completion of a high school equivalency credential assessment or program. No other consent to take a high school equivalency credential assessment or program is required.

Е. Individuals enrolled in any other state institution shall be permitted to take a high school equivalency credential assessment or program at age 16 or 17 only when the individual requests and receives written approval to take the high school equivalency credential assessment or participate in the high school equivalency credential program from the director of the institution where the individual is enrolled or from the educational director of that institution. Such individuals shall receive the department-issued New Mexico high school diploma upon successful completion of a high school equivalency credential assessment or program. No other consent to take a high school equivalency credential assessment or program is required.

[6.30.3.8 NMAC - Rp, 6.30.3.8 NMAC, 12/31/2019]

A.

#### ISSUANCE OF HIGH SCHOOL EOUIVALENCY CREDENTIALS AND HIGH 6.30.3.9 SCHOOL DIPLOMAS:

Upon successful completion of a high school equivalency credential assessment or program:

the qualified high school equivalency publisher or program provider shall issue a (1) transcript to the individual; and

(2) the individual shall submit documentation of the successful completion to the New Mexico higher education department's high school equivalency administrator.

Any individual, whether or not a New Mexico resident, who successfully completes a high school В. equivalency credential assessment or program and is at least 16 years of age will receive the high school equivalency credential or a department-issued New Mexico high school diploma.

A department-issued New Mexico high school diploma awarded after successful completion of a C. high school equivalency credential assessment or program shall be equivalent to a high school diploma or a New Mexico diploma of excellence issued by a school district pursuant to Section 22-13-1.1 NMSA 1978. [6.30.3.9 NMAC - Rp, 6.30.3.9 NMAC, 12/31/2019]

#### 6.30.3.10 CRITERIA FOR BECOMING A QUALIFIED HIGH SCHOOL EQUIVALENCY **PUBLISHER OR PROGRAM PROVIDER:**

A high school equivalency publisher or program provider shall submit an application to the A. department, as required by the department, and shall meet criteria to be designated a qualified high school equivalency publisher or program provider in the state of New Mexico. The application shall include the following criteria:

the high school equivalency credential assessment or program shall be recognized by the (1) division of the United States department of education that oversees career and college readiness standards as an eligible high school equivalency publisher or program;

the high school equivalency assessment or program shall be comparable to all college and (2) career readiness standards established by the state of New Mexico; and

the high school equivalency publisher or program provider shall issue a transcript (3) acceptable for college admissions and applications.

B. The department shall convene a review committee composed of staff from the department and the

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New Mexico higher education department, including the high school equivalency administrator and staff from the adult education division. The review committee shall evaluate high school equivalency publisher or program provider applications and make a determination as to whether the applicant meets criteria to become a qualified high school equivalency publisher or program provider in the state of New Mexico. [6.30.3.10 NMAC - Rp, 6.30.3.10 NMAC, 12/31/2019]

#### HISTORY OF 6.30.3 NMAC: [RESERVED]

6.30.3 NMAC, Eligibility for the General Educational Development Tests (GED Tests) and Diploma in NM, filed 5/31/2001, was repealed and replaced by 6.30.3 NMAC, Eligibility for the High School Equivalency Assessments or Programs and Diploma in NM, effective 12/31/2019.

**PRE-NMAC HISTORY:** The material in this regulation is derived from that previously filed with the State Records Center and Archives under:

SDE Regulation 71-21, Minimum Age Requirement for G.E.D. Test Administration in New Mexico, filed January 31, 1972;

SDE Regulation 73-20, Regulation Governing Minimum Age Requirement for G.E.D. Test Administration in New Mexico, filed June 12, 1973; and

State Board of Education Regulation 80-12, eligibility for the G.E.D. Assessment or program and Diploma in New Mexico, filed March 3, 1981.

ARTICLE 1 General Provisions 22-1-9.2. Department-issued diplomas.

# 22-1-9.2. Department-issued diplomas.

The department shall authorize a diploma program that results in a diploma award by the department for adults who have not graduated from high school but who want a program that:

A. documents their educational attainment through college and career readiness standards;

B. assesses high school-level skills in applied life and work contexts; and

C. prepares them to enter college or the workforce, upgrade their skills, advance to a better job or move from one field of work to another.

History: Laws 2019, ch. 185, § 1.