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October 16, 2013

**MEMORANDUM**

**TO:** Legislative Education Study Committee  
**FR:** Kevin Force *RWF*  
**RE:** **STAFF BRIEF: ADMINISTRATIVE RULEMAKING**

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**Adopted Rule: 6.69.8 NMAC, Teacher and School Leader Effectiveness**

The September 30, 2013 issue of the *New Mexico Register* contained the final adoption of amendments to section 6.69.8 of the *New Mexico Administrative Code* (NMAC), Teacher and School Leader Effectiveness.

The Notice of Proposed Rulemaking was published in the *Register* on June 28, 2013 and, soliciting comment on the rules, noted that the Public Education Department (PED) would conduct a public hearing July 29, 2013, in Mabry Hall of the Jerry Apodaca Education Building, Santa Fe. (See **Attachment 1, NPRM 6.69.8 NMAC, Teacher and School Leader Effectiveness, 6/28/13**, and **Attachment 2, PED Proposed Amendments 6.69.8 NMAC, 6/28/13.**)

The amendments to the rules include:

- new definitions;
- a clarification regarding the data to be used for the evaluation of school leaders; and
- guidelines for the observations of teachers.

New definitions in these rules include:

- “Approved observer” which means, for school year 2013-2014, an individual who holds a Level 3-B license, is employed by a school district or charter school as an administrator, and who has completed PED’s teacher observation training; and
- “Certified observer” which means:
  - for school year 2013-2014, a teacher who has a minimum of five years of verifiable consecutive classroom teaching experience, has completed PED’s teacher observation training, and who passes PED’s assessment of the adopted observation protocol; and
  - for the 2014-2015 and succeeding school years, an individual who:
    - holds an active Level 3-B license or an active teaching license;
    - is employed by a school district or charter school as an administrator or a teacher;
    - completes PED’s teacher observation training and who passes PED’s assessment of the adopted observation protocol;
    - receives a highly effective or exemplary rating during the previous school year; and
    - completes follow-up training and passes PED’s assessment of the adopted observation protocol on an annual basis.

The amendments also clarify that the effectiveness of school leaders shall, whenever possible, include growth based on three years of data for students assigned to public schools, provided that the student achievement growth component be based on the change in a schools A through F letter grade.

Amendments to the guidelines for teacher evaluation primarily address the teacher observation component of the evaluations:

- For a teacher of a course or grade that has a standards-based assessment, the student achievement growth component of a teacher’s evaluation shall be based on, among other factors, a combination of 35 percent standards-based assessment, and 15 percent additional PED-approved assessments, with the proviso that, for school year 2013-2014, if at least 45 percent is based upon standards-based assessment growth, student surveys may constitute up to 5.0 percent.
- Similarly, the growth component of a teacher’s evaluation for a teacher of a course or grade that lacks a standards-based assessment shall be based on district-selected, PED-approved assessments, for a total of 50 percent, provided that, for school year 2013-2014, student surveys may constitute up to 5.0 percent.
- During school year 2013-2014, every classroom teacher must be observed using one of the following options, with at least one of the required observations being conducted by the principal or assistant principal:
  - three observations conducted by the same approved observer; or
  - two observations, consisting of one observation by each of two different approved observers; or
  - two observations consisting of one observation by an approved observer and one observation by a certified observer.

- During the 2014-2015 and each succeeding school year, every classroom teacher must be observed using one of these options, with at least one of the observations being conducted by the school principal or assistant principal:
  - three observations conducted by the same certified observer; or
  - two observations, consisting of one observation by each of two different certified observers.
- For the 2014-2015 and succeeding school years, districts may propose alternative plans, which must be submitted to PED for approval, for observing teachers who have “highly effective” and “exemplary” performance ratings, so long as those plans allow for at least one teacher observation to be conducted by the school principal or assistant principal.
- Both approved and certified observers must use a PED-developed protocol and form that contains at least:
  - the observer’s name;
  - the classroom teacher’s name;
  - the date, the start and stop time of the observation;
  - the number of students present;
  - space for subjective and objective observation; and
  - a total point score for that teacher.
- Observers must also:
  - complete the written observation of a classroom teacher before leaving the school on the day of the observation;
  - agree to maintain confidentiality of the observations, discussing them with no one but the principal; and
  - verify that the observer has not retained, or removed from school premises, a copy of the observation or field notes.

The adopted rules contained several differences from the rules as proposed. (See **Attachment 3, Adopted Rules, 6.69.8 NMAC, Teacher and School Leader Effectiveness, 9/30/13.**) Specifically, as noted in the staff report:

- student achievement growth scores may include consideration of student surveys for up to 5.0 percent of the total score, provided that:
  - in grades and courses with standards-based assessments, at least 45 percent of the growth component be based on the change in students’ standards-based assessment achievement; or
  - in grades and courses without standards-based assessments, 45 percent of the growth component be based upon change in student achievement on district-selected and PED-approved assessments scores;
- evaluations of teachers must include at least one observation conducted by a teacher’s principal or assistant principal; and

- while districts may propose alternative observation protocols to PED for “highly effective” and “exemplary” teachers beginning in school year 2014-2015, such alternative plans must allow for at least one teacher observation to be conducted by the school principal or assistant principal.

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**  
**NOTICE OF PROPOSED RULEMAKING**

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Monday, July 29, 2013, from 9:00 a.m. to 1:00 p.m.. The purpose of the public hearing will be to obtain input on the proposed amendments to 6.69.8 NMAC (TEACHER AND SCHOOL LEADER EFFECTIVENESS).

Interested individuals may provide comments at the public hearing and/or submit written comments to Ms. Mary H. Deets, Administrative Assistant, Office of General Counsel, via email at [Rule.FeedBack@state.nm.us](mailto:Rule.FeedBack@state.nm.us), fax (505) 827-6681, or directed to Ms. Deets at Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department’s website (<http://ped.state.nm.us/>) under the “Public Notices” link, or obtained from Ms. Deets by calling (505) 827-6641.

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 Ms Deets as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

**TITLE 6            PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 69       SCHOOL PERSONNEL - PERFORMANCE**  
**PART 8             TEACHER AND SCHOOL LEADER EFFECTIVENESS**

**6.69.8.1            ISSUING AGENCY:** Public Education Department. (PED)  
 [6.69.8.1 NMAC - N, 08-30-12]

**6.69.8.2            SCOPE:** Chapter 69, Part 8 governs standards for determining and measuring teacher and school leader effectiveness.  
 [6.69.8.2 NMAC - N, 08-30-12]

**6.69.8.3            STATUTORY AUTHORITY:** Sections 22-2-1, 22-2-2, 22-10A-18, 22-10A-19 and 22-10A-19.2, NMSA 1978.  
 [6.69.8.3 NMAC - N, 08-30-12]

**6.69.8.4            DURATION:** Permanent.  
 [6.69.8.4 NMAC - N, 08-30-12]

**6.69.8.5            EFFECTIVE DATE:** August 30, 2012, unless a later date is cited at the end of a section.  
 [6.69.8.5 NMAC - N, 08-30-12]

**6.69.8.6            OBJECTIVE:** This rule establishes uniform procedures for conducting annual evaluations of licensed school employees, for setting the standards for each effectiveness level, for measuring and implementing student achievement growth, and for monitoring each school district's implementation of its teacher and school leader effectiveness evaluation system. This rule also seeks to change the dynamic of placing emphasis on teacher effectiveness and provide the opportunity to acknowledge excellence, thereby replacing the binary system that emphasizes years of experience and credentials.  
 [6.69.8.6 NMAC - N, 08-30-12]

**6.69.8.7            DEFINITIONS:**

A. "Approved observer" means, for the 2013-2014 school year, an individual who holds a level 3-B license, is employed by a school district or charter school as an administrator and who has completed the PED's teacher observation training.

~~[A-]~~ B. "Assistant principal" means a properly licensed instructional leader who assists a principal in a public school.

~~[B-]~~ C. "BIE school" means a bureau of Indian education school that is governmentally owned and controlled, located in New Mexico, provides instruction for first through twelfth grades and is not sectarian or denominational.

D. "Certified observer" means, for the 2013-2014 school year, a teacher, as defined by this rule, who has a minimum of five years of verifiable consecutive classroom teaching experience, has completed the PED's teacher observation training, and who passes the PED's assessment of the adopted observation protocol.

E. "Certified observer" means, for the 2014-2015 school year and succeeding school years, an individual who:

(1) holds an active level 3-B license or an active teaching license;

(2) is employed by a school district or charter school as an administrator or a teacher as defined by this rule;

(3) completes the PED's teacher observation training and who passes the PED's assessment of the adopted observation protocol;

(4) receives a highly effective or exemplary rating during the previous school year; and

(5) completes follow-up training and who passes the PED's assessment of the adopted observation protocol on an annual basis; for purposes of this subsection, annual basis means the earlier of August 1 of a given school year or 90 days after hire; provided, however, that the annual training and certification is transferable within the state.

~~[C-]~~ F. "Department" means the New Mexico public education department or PED.

~~[D-]~~ G. "EES" means effectiveness evaluation systems which are developed by school districts to measure the effectiveness of licensed school employees.

~~[E-]~~ H. "Fidelity observations" means the requirement of school leaders to periodically observe and evaluate assigned teachers in the classroom with observations that have been documented and are verifiable.

~~[F-]~~ L. "Licensed school employee" means teachers and school leaders employed in a public school.

~~[G-]~~ I. "New Mexico standards-based assessment (SBA)" means the collection of instruments that assess student academic performance annually and the students' progress toward meeting the New Mexico content standards with benchmarks and performance standards.

~~[H-]~~ K. "Principal" means the chief instructional leader and administrative head of a public school.

~~[I-]~~ L. "School district" means one of the 89 political subdivisions of the state created for the administration of public schools and includes those state-authorized charter schools that have not requested waiver of evaluation standards for school personnel. District-authorized charter schools are excluded from being considered a school district for purposes of this rule.

~~[J-]~~ M. "School district superintendent" means the chief executive officer of a school district and the head administrator of a charter school.

~~[K-]~~ N. "School leader" means a principal or assistant principal employed in a public school.

~~[L-]~~ O. "State agency" means the New Mexico military institute, the New Mexico school for the blind and visually impaired, the New Mexico school for the deaf, any juvenile detention center or facility served by the juvenile justice service of the children youth and families department, the New Mexico youth diagnostic and development center, the Sequoyah adolescent treatment center of the department of health, Carrie Tingley crippled children's hospital, the New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children.

~~[M-]~~ P. "Teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers. "Teacher" shall not include any person issued a Native American language and culture certificate pursuant to the School Personnel Act [Sections 22-10A-1 to 22-10A-39 NMSA 1978].  
[6.69.8.7 NMAC - N, 08-30-12; A, xx-xx-13]

#### **6.69.8.8 EFFECTIVENESS EVALUATION SYSTEMS:**

A. As soon as possible but not later than the commencement of the 2013-2014 school year, all school districts shall develop and submit to the department for approval and for implementation during the 2013-2014 school year, an effectiveness evaluation system for measuring performance of licensed school employees.

B. School districts may continue to use the highly objective uniform statewide standards of evaluation described in 6.69.4 NMAC for evaluating, promoting, terminating and discharging licensed school employees for performance during the 2012-2013 school year.

C. Each school district shall report annually to the department the results of its effectiveness evaluations of its licensed school employees and the alignment of its effectiveness evaluation system with the three-tiered licensure system.

D. A teacher and school leader EES shall:

- (1) be designed to support effective instruction and student achievement, with the results used to inform school district and school level improvement plans;
- (2) provide appropriate instruments, procedures and criteria and continuous quality improvement of professional skills, with results used to support the professional development of licensed school employees;
- (3) include a mechanism to examine effectiveness data from multiple sources, which may include giving parents and students opportunities to provide input into effectiveness evaluations when appropriate;
- (4) identify those teaching fields for which special evaluation procedures and criteria may be developed in a manner that is consistent and reliable;
- (5) include measures of student achievement growth worth 50%, observations worth 25% and other multiple measures worth 25%, unless otherwise provided for;
- (6) differentiate among at least five levels of performance, which include the following:
  - (a) exemplary, meets competency;
  - (b) highly effective, meets competency;
  - (c) effective, meets competency;
  - (d) minimally effective, does not meet competency; and
  - (e) ineffective, does not meet competency.

E. Teacher and school leader effectiveness evaluation procedures for licensed school employees shall be based on the performance of students assigned to their classrooms or public schools.

F. Every public school classroom teacher who teaches in a grade or subject that has a standards-based assessment that would permit the calculation of student achievement growth, must have an annual effectiveness evaluation, provided that:

(1) each evaluation shall be based on sound educational principles and contemporary research in effective educational practices; and  
(2) the student achievement growth component of a teacher's effectiveness evaluation shall be based on:

(a) valid and reliable data and indicators of student achievement growth assessed annually through a combination of 35% standards-based assessment and 15% additional department-approved assessments, for a total of 50%, provided that this calculation shall not be based upon a single test score;

(b) assessments that are selected by a school district from a list of options approved by the department for any subjects and grade levels not measured by state assessments; and

(c) the PED-adopted measure of student achievement growth calculated for all courses associated with state assessments and for which the school district shall select comparable measures of student achievement growth for other grades and subjects.

G. Every public school classroom teacher who teaches in a grade or subject that does not have a standards-based assessment, also must have an annual effectiveness evaluation, provided that:

(1) each evaluation shall be based on sound educational principles and contemporary research in effective educational practices; and

(2) the student achievement growth component of a teacher's effectiveness evaluation shall be based on:

(a) valid and reliable data and indicators of student achievement growth assessed annually on district-selected and department-approved assessments, for a total of 50%;

(b) assessments that are selected by a school district from a list of options approved by the department for any subjects and grade levels not measured by department-approved assessments; and

(c) the PED-adopted measure of student achievement growth calculated for all courses associated with department-approved assessments and for which the school district shall select comparable measures of student achievement growth, and approved by the PED, for other grades and subjects.

H. An EES shall base at least 25% of the results on data and indicators of instructional practice for teachers. School leaders shall observe instructional practice of teachers using common research-based observational protocol approved by the department that correlates observations to improved student achievement.

I. Effectiveness evaluation criteria for evaluating classroom teachers shall include indicators based on research-based instructional practices as determined by the department.

J. School districts that receive funding under the Bilingual Multicultural Education Act [Sections 22-23-1 to 22-23-6 NMSA 1978] or with students possessing limited English proficiency should ensure that they are doing all they can to carry out all state and federal activities and programs to assist those student populations. [6.69.8.8 NMAC - N, 08-30-12]

[The department maintains a list of approved assessment options and effectiveness evaluation measures and criteria for evaluating classroom teachers on its website, which can be accessed at <http://ped.state.nm.us/> and used by school districts for determining the student achievement growth component and evaluation criteria in a teacher's effectiveness evaluation.]

**6.69.8.9 STUDENT ACHIEVEMENT GROWTH AND STUDENT ASSESSMENT PROGRAMS:**

A. School districts shall use the department-adopted student achievement growth measure to measure the growth in achievement of each student, provided that a school district may request permission to use a combination of the department-approved achievement growth measure and an alternative student achievement measure for non-tested subjects and grades which is department approved.

B. Whenever possible, an EES rating the performance of a classroom teacher shall include three years or more of student achievement growth data.

C. An EES rating the performance of any teachers who are assigned to courses not associated with state assessments may, upon request by their school district through the EES approval process, be permitted to include achievement growth that is demonstrated on state assessments as a percentage of the overall effectiveness evaluation. If that request is permitted and a percentage applied:

(1) achievement growth on the state assessment shall be based on the students assigned to the teacher; and

(2) the achievement growth of the teacher's assigned content area, as measured by the district-selected assessment, shall be the greater percentage.

D. Beginning with school year 2013-2014, if a school district has not implemented appropriate assessments of courses for classroom teachers nor adopted a comparable measure of student achievement growth, student achievement growth shall be measured by:

- (1) the growth in achievement of the classroom teacher's student on state assessments;
- (2) the school's A through F letter grade pursuant to 6.19.8 NMAC for courses in which enrolled students do not take the state assessment, provided that a school district may assign instructional team student achievement growth to classroom teachers in lieu of using the school grade growth calculation; or
- (3) state-developed end of course examinations or other PED-recommended options.

E. Beginning with the 2013-2014 school year, each school district shall be responsible for measuring the achievement gains of their students in all subjects and grade levels other than subjects and grade levels required for the state student achievement testing programs. To accomplish this, each school district shall administer a student assessment for each course they offer that measures mastery of the content as described in the state-adopted course description at the necessary level of rigor for the course. The student assessments may include:

- (1) statewide assessments currently administered in mathematics and reading;
- (2) other standardized assessments approved by the department, including nationally recognized standardized assessments;
- (3) industry certification examinations; and
- (4) department-approved school district-developed or selected end-of-course assessments.

F. A school district may develop its own assessment that measures student achievement growth for classroom teachers who do not teach in a standards-based assessment grade or subject, provided that, it submits the assessment to the department for approval.

[6.69.8.9 NMAC - N, 08-30-12]

[The department maintains a list of approved student achievement growth measures on its website, which can be accessed at <http://ped.state.nm.us/> and used by school districts for determining the growth in advancement of each student.]

#### **6.69.8.10 EFFECTIVENESS EVALUATIONS OF SCHOOL LEADERS:**

A. Every school leader must have an annual effectiveness evaluation, which shall be conducted by a qualified person and approved by PED.

B. All EES ratings for the performance of a school leader shall be based 50% on the change in a school's A through F letter grade that has been assigned pursuant to 6.19.8 NMAC, 25% based on the school's multiple measures and 25% based upon documented fidelity observations of the school leader.

C. The effectiveness evaluation of school leaders shall, whenever possible, include ~~[student achievement growth data]~~ growth based on three years of data for students assigned to the public school ~~[for at least three consecutive school years]~~, provided that, the student achievement growth component of the effectiveness evaluation shall be based on the change in the school's A through F letter grade pursuant to 6.19.8 NMAC.

[6.69.8.10 NMAC - N, 08-30-12; A, xx-xx-13]

[The department maintains a list of leadership standards on its website, which can be accessed at <http://ped.state.nm.us/> and used by school districts in establishing indicators for conducting effectiveness evaluation of school leaders.]

#### **6.69.8.11 EVALUATIONS, OBSERVATIONS, REPORTS AND POST-EVALUATION CONFERENCES:**

A. ~~[A classroom teacher whose previous annual effectiveness evaluation rating was either highly effective or exemplary shall continue to be observed four separate times a year by their school principal or other qualified external observers. The principal rating this classroom teacher shall have no role in selecting nor be related by blood or marriage to the external observer.]~~ During the 2013-2014 school year, every classroom teacher must be observed using one of the following options:

- (1) three observations conducted by the same approved observer; or
- (2) two observations, consisting of one observation by each of two different approved observers; or
- (3) two observations consisting of one observation by an approved observer and one observation by a certified observer.

~~B.~~ [All external observers shall receive training provided by either their school district or the PED. School districts may train their own external observers provided they develop mandatory written guidelines and those guidelines at a minimum require:

- ~~(1) that the external observers possess current New Mexico educator licensure and that they have at least five years of verifiable consecutive classroom teaching experience;~~
- ~~(2) that the external observers be provided with a district or PED developed form that contains at a minimum their name, the classroom teacher's name, the date, the start and stop time of their observation, the number of students present, space for subjective and objective observation, and a total point score of that teacher;~~
- ~~(3) that the external observers complete one actual training session of a classroom teacher who consents to such an observation solely for training purposes;~~
- ~~(4) that the external observers complete their written evaluation of a classroom teacher before leaving the school on the day of the observation; and~~
- ~~(5) that the external observers maintain confidentiality of their observations and written evaluations and do not discuss with anyone except the principal their observations or evaluations, nor may they retain or remove any copies of their evaluations or field notes from school premises.]~~ During the 2014-2015 school year and during each succeeding school year, every classroom teacher must be observed using one of the following options:

- (1) three observations conducted by the same certified observer; or
- (2) two observations, consisting of one observation by each of two different certified observers.

~~C.~~ For the 2014-2015 school year and succeeding school years, districts may propose alternative plans for observing teachers who have highly effective and exemplary performance ratings. The plans must be submitted to the PED for approval.

~~D.~~ An approved or certified observer must use a PED-developed protocol and form that contains at a minimum the observer's name, the classroom teacher's name, the date, the start and stop time of the observation, the number of students present, space for subjective and objective observation, and a total point score for that teacher. An external observer must further:

- (1) complete the written observation of a classroom teacher before leaving the school on the day of the observation;
- (2) agree to maintain confidentiality of the observation and agree not to discuss the observations with anyone except the principal; and
- (3) verify that the observer has not retained or removed a copy of the observation or field notes from school premises.

~~[G.] E.~~ Written feedback from [school leaders and external observers] a school leader and an approved or certified observer shall be provided to an observed classroom [teachers] teacher within ten calendar days after observation is completed, which observation can occur over more than one day, provided that a school district's EES permits this.

~~[D.] F.~~ Upon approval by the department, multiple measures adopted by a school district for use in their EES by the school districts shall constitute 25% of their teacher and school leader EES, provided that:

- (1) the multiple measures align with improved student achievement; and
- (2) each school district adopts at least two multiple measures which shall be used district-wide.

~~[E.] G.~~ The school leader responsible for supervising a licensed school employee shall be the one who evaluates that employee's performance. The school district's EES:

(1) may provide for the supervisor to consider input from other trained evaluators and observers provided that they are not also supervised by the supervisor nor are related by blood or marriage to the supervisor; and

(2) shall provide for contingencies if a supervisor leaves a school district for any reason prior to completing the required effectiveness evaluations of all teachers within that supervisor's responsibilities.

~~[F.] H.~~ Every person who evaluates a licensed school employee under this rule shall submit an original written report to the school district superintendent and an exact copy to the licensed school employee being evaluated. The effectiveness evaluation shall not be changed once each component is completed and it has been delivered to either the school district superintendent or the licensed school employee being evaluated.

~~[G.] I.~~ A licensed school employee rated minimally effective or ineffective may provide a written statement in response to their effectiveness evaluation and that statement shall become a permanent attachment to that employee's evaluation file.

~~[H.] J.~~ Every person who rates a licensed school employee minimally effective or ineffective shall describe in detail the minimally effective or ineffective performance and inform the licensee in writing:

(1) of a right to a post-evaluation conference which the evaluator must convene and which shall occur no later than ten days after the evaluation is completed unless the employee agrees to an extension;

(2) that during the conference the evaluator will make recommendations to the employee with respect to specific areas of unsatisfactory performance and provide feedback that lays the initial framework for an individual professional growth plan;

(3) that the evaluator will provide assistance in helping the employee correct unsatisfactory performance and that the district will extend strategic support aligned to best practices identified by the department to assist the employee to correct unsatisfactory performance;

(4) that if the employee has an employment contract, the employee shall be placed on a performance growth plan for 90 school days from receipt of the notice of minimally effective or ineffective performance, provided that:

(a) the 90 days shall not include weekends, school holidays or school vacation periods, declared snow days, and approved employee leave days;

(b) during the 90 days the licensed school employee shall be observed and evaluated periodically, that is, more than four times in writing and shall be informed of the results of those observations; and

(c) the evaluator shall maintain documentation of having provided assistance and notification of in-service training opportunities to help correct the performance deficiencies noted of the licensed school employee; and

(5) that receipt of the notice shall constitute notice of uncorrected unsatisfactory work performance pursuant to Section 22-10A-3 NMSA 1978 and 6.69.2 NMAC.

~~[I.]~~ K. Within five school days after the expiration of the 90-day performance growth plan, the evaluator shall determine whether the performance deficiencies have been corrected and forward a written recommendation to the school district superintendent.

~~[J.]~~ L. Within 10 school days after receipt of that written recommendation, the school district superintendent shall in writing notify the licensed school employee who has an employment contract with the school district whether the performance deficiencies have been satisfactorily corrected. A copy of the evaluator's recommendation shall accompany that notice.

~~[K.]~~ M. If satisfactory progress has not been made, the local superintendent shall determine whether to discharge or terminate the employee pursuant to Sections 22-10A-27 or 22-10A-24, NMSA 1978.

~~[L.]~~ N. An employee who has been placed on a 90-day performance growth plan because of minimally effective or ineffective performance and who has not been employed by a school district for three consecutive years, shall have no reasonable expectation of continued employment beyond the end of the contract year by reason of being on a growth plan.

~~[M.]~~ O. The school district superintendent shall provide written notice to the educator quality division of the department of the name and licensure file number of all licensed school employees who have received two consecutive minimally effective or ineffective performance ratings and who have been given a written notice of proposed discharge or of proposed termination, or who have resigned their employment after receiving either of these ratings.

[6.69.8.11 NMAC - N, 08-30-12; A, xx-xx-13]

#### **6.69.8.12 APPEAL OF EFFECTIVENESS EVALUATIONS:**

A. A school district shall adopt procedures for permitting expedited review for the purpose of a licensed school employee requesting an exemption from being rated during a given school year under the school district's EES based only upon extraordinary circumstances.

B. The procedures shall require a written appeal to be submitted to the appellate reviewer within no more than 15 calendar days of receipt of a written notice that the licensed employee's performances deficiencies have not been satisfactorily corrected.

C. Appeals shall be received in a manner that permits verification of the date of receipt.

D. The person who evaluated the licensed school employee shall not be same person who receives and determines the appeal.

E. An exemption from the provisions of this rule can only be granted for one school year based upon extraordinary circumstances, which shall consist of:

(1) a licensed school employee's not having performed services during an entire school year, excluding days out for approved leave and school holidays or closure days, for reasons beyond the employee's control;

(2) a licensed school employee's not being able to perform services for extended periods during a school year due to documented medical reasons of the employee or of the employee's spouse, live-in partner or a child;

(3) a licensed school employee's not being able to perform services for extended periods during a school year due to the death of the employee's spouse, live-in partner or a child; or

(4) a licensed school employee's not having been afforded a full 90 days to demonstrate growth in performance for any reason including the employee's own illness, provided that it shall be the employee's burden to provide verification of not being afforded the full 90 days.

F. All decisions on appeals rendered under this section shall be final and not further reviewable by anyone else at the school district or by the PED.

[6.69.8.12 NMAC - N, 08-30-12]

**6.69.8.13 TEACHERS AND ADMINISTRATORS IN NON-PUBLIC SCHOOLS:**

A. Only licensed teachers and school leaders employed in schools subject to the A-B-C-D-F Schools Rating Act [Sections 22-2E-1 to 22-2E-4 NMSA 1978] shall be governed by any requirement or provision of this rule.

B. Specifically, neither licensed teachers nor administrators employed in private schools, BIE schools or state agencies shall be governed by any requirement or provision of this rule.

[6.69.8.13 NMAC - N, 08-30-12]

**HISTORY OF 6.69.8 NMAC: [Reserved]**

This is an amendment to 6.69.8 NMAC, Sections 7, 8, 10 and 11, effective September 30, 2013.

**6.69.8.7 DEFINITIONS:**

~~A.~~ A. "Approved observer" means, for the 2013-2014 school year, an individual who holds a level 3-B license, is employed by a school district or charter school as an administrator and who has completed the PED's teacher observation training.

~~[A-]~~ B. "Assistant principal" means a properly licensed instructional leader who assists a principal in a public school.

~~[B-]~~ C. "BIE school" means a bureau of Indian education school that is governmentally owned and controlled, located in New Mexico, provides instruction for first through twelfth grades and is not sectarian or denominational.

D. "Certified observer" means, for the 2013-2014 school year, a teacher, as defined by this rule, who has a minimum of five years of verifiable consecutive classroom teaching experience, has completed the PED's teacher observation training, and who passes the PED's assessment of the adopted observation protocol.

E. "Certified observer" means, for the 2014-2015 school year and succeeding school years, an individual who:

(1) holds an active level 3-B license or an active teaching license;

(2) is employed by a school district or charter school as an administrator or a teacher as defined by this rule;

(3) completes the PED's teacher observation training and who passes the PED's assessment of the adopted observation protocol;

(4) receives a highly effective or exemplary rating during the previous school year; and

(5) completes follow-up training and who passes the PED's assessment of the adopted observation protocol on an annual basis; for purposes of this subsection, annual basis means the earlier of August 1 of a given school year or 90 days after hire; provided, however, that the annual training and certification is transferable within the state.

~~[G-]~~ F. "Department" means the New Mexico public education department or PED.

~~[D-]~~ G. "EES" means effectiveness evaluation systems which are developed by school districts to measure the effectiveness of licensed school employees.

~~[E-]~~ H. "Fidelity observations" means the requirement of school leaders to periodically observe and evaluate assigned teachers in the classroom with observations that have been documented and are verifiable.

~~[F-]~~ I. "Licensed school employee" means teachers and school leaders employed in a public school.

~~[G-]~~ J. "New Mexico standards-based assessment (SBA)" means the collection of instruments that assess student academic performance annually and the students' progress toward meeting the New Mexico content standards with benchmarks and performance standards.

~~[H-]~~ K. "Principal" means the chief instructional leader and administrative head of a public school.

~~[I-]~~ L. "School district" means one of the 89 political subdivisions of the state created for the administration of public schools and includes those state-authorized charter schools that have not requested waiver of evaluation standards for school personnel. District-authorized charter schools are excluded from being considered a school district for purposes of this rule.

~~[J-]~~ M. "School district superintendent" means the chief executive officer of a school district and the head administrator of a charter school.

~~[K-]~~ N. "School leader" means a principal or assistant principal employed in a public school.

~~[L-]~~ O. "State agency" means the New Mexico military institute, the New Mexico school for the blind and visually impaired, the New Mexico school for the deaf, any juvenile detention center or facility served by the juvenile justice service of the children youth and families department, the New Mexico youth diagnostic and development center, the Sequoyah adolescent treatment center of the department of health, Carrie Tingley crippled children's hospital, the New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children.

~~[M-]~~ P. "Teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers. "Teacher" shall not include any person issued a Native American language and culture certificate pursuant to the School Personnel Act [Sections 22-10A-1 to 22-10A-39 NMSA 1978].

[6.69.8.7 NMAC - N, 08-30-12; A, 09-30-13]

**6.69.8.8 EFFECTIVENESS EVALUATION SYSTEMS:**

A. As soon as possible but not later than the commencement of the 2013-2014 school year, all school districts shall develop and submit to the department for approval and for implementation during the 2013-2014 school year, an effectiveness evaluation system for measuring performance of licensed school employees.

B. School districts may continue to use the highly objective uniform statewide standards of evaluation described in 6.69.4 NMAC for evaluating, promoting, terminating and discharging licensed school employees for performance during the 2012-2013 school year.

C. Each school district shall report annually to the department the results of its effectiveness evaluations of its licensed school employees and the alignment of its effectiveness evaluation system with the three-tiered licensure system.

D. A teacher and school leader EES shall:

(1) be designed to support effective instruction and student achievement, with the results used to inform school district and school level improvement plans;

(2) provide appropriate instruments, procedures and criteria and continuous quality improvement of professional skills, with results used to support the professional development of licensed school employees;

(3) include a mechanism to examine effectiveness data from multiple sources, which may include giving parents and students opportunities to provide input into effectiveness evaluations when appropriate;

(4) identify those teaching fields for which special evaluation procedures and criteria may be developed in a manner that is consistent and reliable;

(5) include measures of student achievement growth worth 50%, observations worth 25% and other multiple measures worth 25%, unless otherwise provided for;

(6) differentiate among at least five levels of performance, which include the following:

(a) exemplary, meets competency;

(b) highly effective, meets competency;

(c) effective, meets competency;

(d) minimally effective, does not meet competency; and

(e) ineffective, does not meet competency.

E. Teacher and school leader effectiveness evaluation procedures for licensed school employees shall be based on the performance of students assigned to their classrooms or public schools.

F. Every public school classroom teacher who teaches in a grade or subject that has a standards-based assessment that would permit the calculation of student achievement growth, must have an annual effectiveness evaluation, provided that:

(1) each evaluation shall be based on sound educational principles and contemporary research in effective educational practices; and

(2) the student achievement growth component of a teacher's effectiveness evaluation shall be based on:

(a) valid and reliable data and indicators of student achievement growth assessed annually through a combination of 35% standards-based assessment and 15% additional department-approved assessments, for a total of 50%, provided that this calculation shall not be based upon a single test score. For the 2013-2014 school year, if at least 45% of the total is based upon standards-based assessments, student surveys may constitute up to 5%.

(b) assessments that are selected by a school district from a list of options approved by the department for any subjects and grade levels not measured by state assessments; and

(c) the PED-adopted measure of student achievement growth calculated for all courses associated with state assessments and for which the school district shall select comparable measures of student achievement growth for other grades and subjects.

G. Every public school classroom teacher who teaches in a grade or subject that does not have a standards-based assessment, also must have an annual effectiveness evaluation, provided that:

(1) each evaluation shall be based on sound educational principles and contemporary research in effective educational practices; and

(2) the student achievement growth component of a teacher's effectiveness evaluation shall be based on:

(a) valid and reliable data and indicators of student achievement growth assessed annually on district-selected and department-approved assessments, for a total of 50%. For the 2013-2014 school year, student surveys may constitute up to 5%.

(b) assessments that are selected by a school district from a list of options approved by the department for any subjects and grade levels not measured by department-approved assessments; and

(c) the PED-adopted measure of student achievement growth calculated for all courses associated with department-approved assessments and for which the school district shall select comparable measures of student achievement growth, and approved by the PED, for other grades and subjects.

H. An EES shall base at least 25% of the results on data and indicators of instructional practice for teachers. School leaders shall observe instructional practice of teachers using common research-based observational protocol approved by the department that correlates observations to improved student achievement.

I. Effectiveness evaluation criteria for evaluating classroom teachers shall include indicators based on research-based instructional practices as determined by the department.

J. School districts that receive funding under the Bilingual Multicultural Education Act [Sections 22-23-1 to 22-23-6 NMSA 1978] or with students possessing limited English proficiency should ensure that they are doing all they can to carry out all state and federal activities and programs to assist those student populations. - [6.69.8.8 NMAC - N, 08-30-12; A, 09-30-13]

[The department maintains a list of approved assessment options and effectiveness evaluation measures and criteria for evaluating classroom teachers on its website, which can be accessed at <http://ped.state.nm.us/> and used by school districts for determining the student achievement growth component and evaluation criteria in a teacher's effectiveness evaluation.]

#### 6.69.8.10 EFFECTIVENESS EVALUATIONS OF SCHOOL LEADERS:

A. Every school leader must have an annual effectiveness evaluation, which shall be conducted by a qualified person and approved by PED.

B. All EES ratings for the performance of a school leader shall be based 50% on the change in a school's A through F letter grade that has been assigned pursuant to 6.19.8 NMAC, 25% based on the school's multiple measures and 25% based upon documented fidelity observations of the school leader.

C. The effectiveness evaluation of school leaders shall, whenever possible, include [~~student achievement growth data~~] growth based on three years of data for students assigned to the public school [~~for at least three consecutive school years~~], provided that, the student achievement growth component of the effectiveness evaluation shall be based on the change in the school's A through F letter grade pursuant to 6.19.8 NMAC.

[6.69.8.10 NMAC - N, 08-30-12; A, 09-30-13]

[The department maintains a list of leadership standards on its website, which can be accessed at <http://ped.state.nm.us/> and used by school districts in establishing indicators for conducting effectiveness evaluation of school leaders.]

#### 6.69.8.11 EVALUATIONS, OBSERVATIONS, REPORTS AND POST-EVALUATION CONFERENCES:

A. [~~A classroom teacher whose previous annual effectiveness evaluation rating was either highly effective or exemplary shall continue to be observed four separate times a year by their school principal or other qualified external observers. The principal rating this classroom teacher shall have no role in selecting nor be related by blood or marriage to the external observer.~~] During the 2013-2014 school year, every classroom teacher must be observed using one of the following options, with at least one of the required observations conducted by the school principal or assistant principal:

- (1) three observations conducted by the same approved observer; or
- (2) two observations, consisting of one observation by each of two different approved observers; or
- (3) two observations consisting of one observation by an approved observer and one observation by a certified observer.

B. [~~All external observers shall receive training provided by either their school district or the PED. School districts may train their own external observers provided they develop mandatory written guidelines and those guidelines at a minimum require:~~

- ~~(1) that the external observers possess current New Mexico educator licensure and that they have at least five years of verifiable consecutive classroom teaching experience;~~
- ~~(2) that the external observers be provided with a district or PED developed form that contains at a minimum their name, the classroom teacher's name, the date, the start and stop time of their observation, the number of students present, space for subjective and objective observation, and a total point score of that teacher;~~
- ~~(3) that the external observers complete one actual training session of a classroom teacher who consents to such an observation solely for training purposes;~~

~~\_\_\_\_\_ (4) that the external observers complete their written evaluation of a classroom teacher before leaving the school on the day of the observation; and~~

~~\_\_\_\_\_ (5) that the external observers maintain confidentiality of their observations and written evaluations and do not discuss with anyone except the principal their observations or evaluations, nor may they retain or remove any copies of their evaluations or field notes from school premises.]~~ During the 2014-2015 school year and during each succeeding school year, every classroom teacher must be observed using one of the following options, with at least one of the required observations conducted by the school principal or assistant principal:

(1) three observations conducted by the same certified observer; or

(2) two observations, consisting of one observation by each of two different certified observers.

C. For the 2014-2015 school year and succeeding school years, districts may propose alternative plans for observing teachers who have highly effective and exemplary performance ratings. The plans must be submitted to the PED for approval and must provide that at least one observation is conducted by the school principal or assistant principal.

D. An approved or certified observer must use a PED-developed protocol and form that contains at a minimum the observer's name, the classroom teacher's name, the date, the start and stop time of the observation, the number of students present, space for subjective and objective observation, and a total point score for that teacher. An external observer must further:

(1) complete the written observation of a classroom teacher before leaving the school on the day of the observation;

(2) agree to maintain confidentiality of the observation and agree not to discuss the observations with anyone except the principal; and

(3) verify that the observer has not retained or removed a copy of the observation or field notes from school premises.

~~[C-] E.~~ Written feedback from [school leaders and external observers] a school leader and an approved or certified observer shall be provided to an observed classroom [teachers] teacher within ten calendar days after observation is completed, which observation can occur over more than one day, provided that a school district's EES permits this.

~~[D-] E.~~ Upon approval by the department, multiple measures adopted by a school district for use in their EES by the school districts shall constitute 25% of their teacher and school leader EES, provided that:

(1) the multiple measures align with improved student achievement; and

(2) each school district adopts at least two multiple measures which shall be used district-wide.

~~[E-] G.~~ The school leader responsible for supervising a licensed school employee shall be the one who evaluates that employee's performance. The school district's EES:

(1) may provide for the supervisor to consider input from other trained evaluators and observers provided that they are not also supervised by the supervisor nor are related by blood or marriage to the supervisor; and

(2) shall provide for contingencies if a supervisor leaves a school district for any reason prior to completing the required effectiveness evaluations of all teachers within that supervisor's responsibilities.

~~[F-] H.~~ Every person who evaluates a licensed school employee under this rule shall submit an original written report to the school district superintendent and an exact copy to the licensed school employee being evaluated. The effectiveness evaluation shall not be changed once each component is completed and it has been delivered to either the school district superintendent or the licensed school employee being evaluated.

~~[G-] I.~~ A licensed school employee rated minimally effective or ineffective may provide a written statement in response to their effectiveness evaluation and that statement shall become a permanent attachment to that employee's evaluation file.

~~[H-] J.~~ Every person who rates a licensed school employee minimally effective or ineffective shall describe in detail the minimally effective or ineffective performance and inform the licensee in writing:

(1) of a right to a post-evaluation conference which the evaluator must convene and which shall occur no later than ten days after the evaluation is completed unless the employee agrees to an extension;

(2) that during the conference the evaluator will make recommendations to the employee with respect to specific areas of unsatisfactory performance and provide feedback that lays the initial framework for an individual professional growth plan;

(3) that the evaluator will provide assistance in helping the employee correct unsatisfactory performance and that the district will extend strategic support aligned to best practices identified by the department to assist the employee to correct unsatisfactory performance;

(4) that if the employee has an employment contract, the employee shall be placed on a performance growth plan for 90 school days from receipt of the notice of minimally effective or ineffective performance, provided that:

(a) the 90 days shall not include weekends, school holidays or school vacation periods, declared snow days, and approved employee leave days;

(b) during the 90 days the licensed school employee shall be observed and evaluated periodically, that is, more than four times in writing and shall be informed of the results of those observations; and

(c) the evaluator shall maintain documentation of having provided assistance and notification of in-service training opportunities to help correct the performance deficiencies noted of the licensed school employee; and

(5) that receipt of the notice shall constitute notice of uncorrected unsatisfactory work performance pursuant to Section 22-10A-3 NMSA 1978 and 6.69.2 NMAC.

[~~F~~] K. Within five school days after the expiration of the 90-day performance growth plan, the evaluator shall determine whether the performance deficiencies have been corrected and forward a written recommendation to the school district superintendent.

[~~F~~] L. Within 10 school days after receipt of that written recommendation, the school district superintendent shall in writing notify the licensed school employee who has an employment contract with the school district whether the performance deficiencies have been satisfactorily corrected. A copy of the evaluator's recommendation shall accompany that notice.

[~~K~~] M. If satisfactory progress has not been made, the local superintendent shall determine whether to discharge or terminate the employee pursuant to Sections 22-10A-27 or 22-10A-24, NMSA 1978.

[~~L~~] N. An employee who has been placed on a 90-day performance growth plan because of minimally effective or ineffective performance and who has not been employed by a school district for three consecutive years, shall have no reasonable expectation of continued employment beyond the end of the contract year by reason of being on a growth plan.

[~~M~~] O. The school district superintendent shall provide written notice to the educator quality division of the department of the name and licensure file number of all licensed school employees who have received two consecutive minimally effective or ineffective performance ratings and who have been given a written notice of proposed discharge or of proposed termination, or who have resigned their employment after receiving either of these ratings.

[6.69.8.11 NMAC - N, 08-30-12; A, 09-30-13]