

# Concise Explanatory Statement For Rulemaking Adoption:

## Findings required for rulemaking adoption:

### Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

Specific statutory or other authority authorizing rulemaking:  
 Sections 9-24-8, 22-2-1, 22-2-2, and 22-10A-17 NMSA 1978.

Rule adoption date:  
 November 17, 2022

Rule effective date:  
 November 29, 2022

### Reasons for adopting rule:

The purpose of the proposed new rule 6.63.18 NMAC, Licensure for School Behavioral Health Counselors, Grades Pre K-12, is to establish a licensure pathway for individuals seeking a school behavioral health counseling license. By creating this pathway, schools will be able to bill Medicaid for the counseling a school behavioral health counselor provides all Medicaid eligible students, including students without an individualized education plan. At present, schools can only offer such services to students with an individualized education plan.

The proposed new rule 6.63.18 NMAC, Licensure for School Behavioral Health Counselors, Grades Pre K-12, creates a new pathway for licensed professionals to provide behavioral health counseling to all students in need of such support. The proposed new rule does the following:

- lists the requirements an individual must meet to become a licensed school behavioral counselor;
- lists the requirements a licensed school behavioral counselor must meet before advancing from a Level 1 to a Level 2 license and from a Level 2 license to a Level 3 license;
- provides the competencies a school behavioral health counselor shall be able to do; and
- notes licensed professional counselors and licensed mental health counselors are required to be supervised by a licensed professional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), licensed professional art therapist (LPAT), licensed psychologist, licensed psychiatrist, or licensed independent social worker until they are a LPCC, LMFT, or LPAT.

### Reasons for any change between the published proposed rule and the final rule:

The department reviewed and considered all written and oral feedback received during the public comment period. Changes between the published proposed rule and the adopted rule include expanding the type of department-issued licenses allowed to meet licensure requirements, allowing out-of-state experience working with children and adolescents to be considered when applying for licensure, and minor corrections throughout the rule. For more detail on the changes between the proposed rule and the rule as adopted, reasons for changes, and information as to why the Department may not have accepted comments or suggested changes, please see "6.63.18 NMAC, Response to Public Comment," attached.

### Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Vickie C. Bannerman, Ed.D.

Check if authority has been delegated

Title:

Deputy Secretary of Identity, Equity, and Transformation

Signature: (BLACK ink only OR Digital Signature)

Date signed:

DocuSigned by:  
*Vickie Bannerman*  
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11/17/2022

Response to Public Comment  
6.63.18 NMAC, Licensure for School Behavioral Health Counselors, Grades Pre K-12

RULE CHANGES	
Section	Change
6.63.18.8 Requirements	<ul style="list-style-type: none"><li>• In Subsection A, changed “school ‘counselors’” to “school ‘counseling’” and added “rehabilitation counseling.”</li><li>• Added Subsection F.</li><li>• Added Subsection G.</li></ul>
6.63.18.9 Supervision	<ul style="list-style-type: none"><li>• Changed “must” to “shall” in the third sentence and added “the” in the last sentence before “supervisor and superintendent.”</li></ul>

Response to Public Comment  
6.63.18 NMAC, Licensure for School Behavioral Health Counselors, Grades Pre K-12

**Public Comment Period:** September 13, 2022, to October 17, 2022

The New Mexico Public Education Department (PED) received 7 public comments for 6.63.18 NMAC, Licensure for School Behavioral Health Counselors, Grades Pre K-12. All substantive comments have been summarized below. Comments that are not substantive in nature or fall outside the scope of the rule have not been included.

Requirements	
Summary of Comments	PED Response
The department should require counselors or their supervisors to have experience working in schools.	The requirements an individual must meet to become a school behavioral health counselor, including the types of licenses or certifications they are required to hold, prepare an individual to be able to work with the students they will support.

Competencies	
Summary of Comments	PED Response
Competencies should include those also required for a school counselor.	The purpose of the proposed rule is to create a license that offers supports for students different from those a school counselor offers. Each type of counselor offers specific skills or expertise that benefit all students, therefore expanding the types of services students have access to.
School behavioral health counselors should be able to serve students with special needs, including the needs of students with disabilities. Additionally, school behavioral health counselors should not be allowed to physically restrain or seclude students, nor should the counselors need to conduct threat assessments.	<p>A school behavioral health counselor would not be any different from other types of counselors that students have access to in that they would need to utilize their experience and expertise to address the needs of each student, including students with disabilities.</p> <p><a href="#">Section 22-5-4.12 NMSA 1978</a> allows schools to use restraint or seclusion techniques on any student if the student’s behavior presents an imminent danger of serious physical harm to the student or others and if less restrictive interventions appear insufficient to mitigate the danger of serious physical harm. The state law also requires such techniques to be used only by school employees who are trained to do so. These requirements are also outlined in <a href="#">6.11.2 NMAC, Rights and Responsibilities of the Public Schools and Public School Students</a>.</p> <p>Conducting a threat assessment would allow a school behavioral health counselor identify if a student is a threat to themselves or others, therefore allowing the counselor to determine the best supports or resources.</p>

Response to Public Comment  
6.63.18 NMAC, Licensure for School Behavioral Health Counselors, Grades Pre K-12

Licensure Level or Requirements	
Summary of Comments	PED Response
An individual's professional experience, including out-of-state experience, and their level of licensure under a different license should be considered when determining licensure level.	PED added language to consider an individual's experience working with children or adolescents in any state or foreign country or combination of other states or countries other than New Mexico.
The school counselor requirement should be removed, and the licensed alcohol and drug abuse counselor should be removed from the list of eligible certifications.	<p>PED-issued licensure addresses behavioral health counselors' duties specific to the school environment whereas the New Mexico Counseling and Therapy Practice Board is responsible for establishing requirements related to the counselor credentials and clinical practice.</p> <p>Licensed alcohol and drug abuse counselors would be able provide students with the supports or resources they need to address an issue that significantly impacts New Mexico.</p>

Definitions	
Summary of Comments	PED Response
The rule should include a definition for school behavioral health counseling.	The proposed rule provides an explanation of the licensure requirements, necessary competencies, and likely duties and other aspects of practice that, as a whole, provide a comprehensive explanation of what a school behavioral counselor is and does.