

PROPOSED NEW RULE

This draft reflects what the rule would look like if it is adopted as proposed.

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 31 SPECIAL EDUCATION PART 3 GIFTED AND TALENTED STUDENTS

6.31.3.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.31.3.1 NMAC - N, 7/31/2023]

6.31.3.2 SCOPE: The requirements of these rules are binding on each New Mexico public agency that has direct or delegated authority to provide gifted education and related services, regardless of whether it provides gifted education and related services directly, by contract, or through other arrangements.
[6.31.3.2 NMAC - N, 7/31/2023]

6.31.3.3 STATUTORY AUTHORITY: This rule is being promulgated pursuant to Section 22-13-6.1 NMSA 1978.
[6.31.3.3 NMAC - N, 7/31/2023]

6.31.3.4 DURATION: Permanent.
[6.31.3.4 NMAC - N, 7/31/2023]

6.31.3.5 EFFECTIVE DATE: July 31, 2023, unless a later date is specified at the end of a section.
[6.31.3.5 NMAC - N, 7/31/2023]

6.31.3.6 OBJECTIVE: This rule is promulgated to assist New Mexico public agencies in appropriately identifying and providing educational services for gifted students. The purposes of this rule are to ensure all gifted students have gifted education and related services to meet their individual needs; ensure that the rights of gifted students and their parents are protected; assist public agencies to provide for the education of all gifted students; and evaluate and ensure the effectiveness of efforts to educate those students.
[6.31.3.6 NMAC - N, 7/31/2023]

6.31.3.7 DEFINITIONS:

A. “Aptitude” means capacity to acquire competence, skill, or behaviors that can be monitored, evaluated, or observed.

B. “Articulation” means the communication and planning about student educational needs that occurs as students are promoted through the school system grade by grade.

C. “Artistic ability” means having exceptional capability or potential in visual art, theater, music, or dance. Artistic ability is demonstrated by achieving at an advanced level on a performance assessment or scoring in the ninety-fifth percentile or above on standardized arts assessments.
[History notes go here.]

D. “Commensurate growth” means the academic and affective progress that can be measured and should be expected of a gifted student given the student’s level of achievement, learning needs, and abilities matched with the appropriate instructional level.

E. “Creative or divergent thinking” means having exceptional capability or potential to solve a problem or reach a decision using strategies that deviate from commonly used or previously taught strategies, which is demonstrated by achieving an advanced level on performance assessments or scoring in the ninety-fifth percentile or above on standardized tests of creative or divergent thinking.

F. “General intellectual ability” means having exceptional capability or potential recognized through cognitive processes, such as memory, reasoning, rate of learning, spatial reasoning, ability to find and solve problems, ability to manipulate abstract ideas, and ability to make connections, which is demonstrated by scoring in the ninety-fifth percentile or above on standardized cognitive ability tests.

G. “Gifted individualized education program” or **“GIEP”** means a written statement for a gifted student that is developed, reviewed, and revised to deliver appropriate educational services to meet the needs of gifted students.

H. “Gifted individualized education program team” or **“GIEP team”** means a multidisciplinary team that includes:

- (1) the parents or guardians of the gifted student;

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(2) if the gifted student is participating in the general education environment, at least one of the gifted student's general education teachers;

(3) at least one of the gifted student's gifted education teachers, and if appropriate, at least one of twice-exceptional student's special education providers;

(4) an LEA representative who is:

(a) qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of gifted students;

(b) knowledgeable of the general education curriculum; and

(c) knowledgeable of the availability of resources of the department;

(5) other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and

(6) whenever appropriate, the gifted student.

I. "Gifted student" means a person between the ages of five and 21 whose abilities, talents, or potential for accomplishment are so exceptional or developmentally advanced that they require special provisions to meet their educational programming needs.

J. "Identification process" means a procedure for screening, referral, evaluation, and identification of gifted students.

K. "LEA" means a local education agency, being a public school district or a state-chartered charter school.

L. "Leadership ability" means exceptional capability or potential to influence, inspire, and empower groups demonstrated by achieving an advanced level on leadership ability performance assessment or scoring in the ninety-fifth percentile or above on standardized leadership tests.

M. "Performance assessment" means systematic analysis or evaluation of a student's product, performance, or behaviors based on valid criteria, scoring rubric, or rating scale norms.

N. "Pre-advanced placement" means a variety of programs and strategies that prepare students to take advanced placement courses before or during high school.

O. "Precollege" means a variety of programs to help students plan, apply, and pay for college. Programs may be administered by schools, colleges and universities, or community organizations or businesses.

P. "Problem-solving or critical thinking" means having outstanding capabilities to analyze a problem and engage in solutions-oriented performance, which is demonstrated by achieving an advanced level on problem-solving or critical thinking performance assessments or scoring in the ninety-fifth percentile or above on standardized problem-solving assessments.

Q. "Screening" means an assessment method used to provide evidence of exceptional potential ability or aptitude. Screening tools may be qualitative or quantitative. Screening data contribute to a body of evidence for making identification and instructional decisions.

R. "Specific aptitude" means having exceptional capability in content areas, such as having a strong knowledge base or the ability to ask insightful, pertinent questions within the discipline, and that is demonstrated by achievement at an advanced level on performance assessments or state standardized achievement tests.

S. "Twice-exceptional" means a student who is identified as a gifted student and is:

(1) identified as a student with a disability pursuant to 6.31.2 NMAC; or

(2) a qualified individual pursuant to Section 504 of the Rehabilitation Act of 1973, 29

U.S.C.A. §794.

[6.31.3.7 NMAC - N, 7/31/2023]

6.31.3.8 ADVISORY COMMITTEE:

A. Each LEA shall create a gifted advisory committee of parents, community members, students, and school staff members. A school district may create as many advisory committees as there are high schools in the school district or may create a district-wide advisory committee.

B. The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the LEA or the schools which the advisory committee represents. Representation from all schools the committee is advising is required.

C. The advisory committee shall:

(1) regularly review the goals and priorities of the gifted program, including the operational plans for student evaluation, identification, placement, and service delivery;

(2) demonstrate support for the gifted program;

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(3) provide information to the department about the impact that cultural background, linguistic background, socioeconomic status, and disability conditions within the community may have on the student identification process and service delivery;

(4) advocate for students of underrepresented groups due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these students have equal opportunities to benefit from services for gifted students;

(5) meet three or more times per year at regular intervals; and

(6) work with the LEA administration to complete an annual report of the LEA's gifted programming. The LEA shall submit the report to the department.

D. The LEA shall maintain formal documentation of committee membership, activities, and recommendations. If proposals are made by the committee, they shall be submitted in writing to the LEA. The LEA shall respond in writing to any proposed actions before the next scheduled meeting of the advisory committee. [6.31.3.8 NMAC - N, 7/31/2023]

6.31.3.9 LEA GIFTED EDUCATION PROGRAM PLAN:

A. LEAs shall submit a gifted education program plan for the next fiscal year to the department on a biannual basis by April 30. A gifted education program plan shall be deemed complete if it addresses all elements specified in Subsection B of this section. The gifted education program plan shall describe the efforts the LEA will make to identify gifted students from all demographic groups, including racially and ethnically diverse students, economically diverse students, culturally diverse students, students with limited English proficiency, and students with disabilities.

B. A gifted education program plan shall:

(1) describe how the LEA will communicate with parents and school personnel about the gifted program plan described in this subsection;

(2) describe the identification process the LEA will use to identify gifted students. The identification process shall recognize a student's exceptional abilities or potential, interests, and needs to guide student instruction and individualized programming. The description of the identification process shall include:

(a) procedures to equalize access to screening and to improve proportionality of representation for all demographic groups pursuant to Subsection A of this section;

(b) referral and screening procedures;

(c) multiple sources of qualitative and quantitative data;

(d) qualification criteria;

(e) GIEP team procedures;

(f) methods of communicating with parents about results and next steps of a student's eligibility, and GIEP development and review; and

(g) dispute resolution processes to address parent disputes over gifted identification or parent disputes over gifted services. The dispute resolution process shall be pursuant to Section 14 of this rule.

(3) describe the programming components the LEA will use to address the educational needs of gifted students. Programming components shall develop the strengths and interests of gifted students and address other educational needs as determined by GIEP teams. Anticipating these needs, programming components shall address:

(a) alignment of current assessment data to services in the areas of gifted students' needs;

(b) structures by which gifted students' anticipated individual needs shall be met at each grade level;

(c) support for gifted students' general education teachers in differentiated instruction methods;

(d) social, affective, and guidance support systems for gifted students;

(e) alignment of general education and gifted education instructional content with gifted students' areas of strength;

(f) articulation to meet gifted students' needs as they are promoted to the next grade;

(g) articulation to meet gifted students' needs as they graduate from high school and continue in a postsecondary learning setting;

(h) pre-advanced placement or precollege support; and

(i) GIEP development and annual review conducted through GIEP teams.

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- (4) describe how the LEA will:
- (a) assess and monitor gifted students' commensurate growth in academic achievement;
 - (b) assess and monitor gifted students' affective development;
 - (c) ensure assessment and reporting of gifted students' academic achievement are consistent with accreditation requirements;
 - (d) periodically conduct a program evaluation of the gifted program, including evaluation feedback from the advisory committee pursuant to Section 8 of this rule, and review programming components including but not limited to gifted policy, goals, identification processes, programming components, staffing, budget and reporting practices, and the impact of programming on gifted student achievement and progress; and
 - (e) inform parents, educators, and other required GIEP team members of the program evaluation.
- (5) describe the staffing plan and qualifications of those who provide instruction, counseling, coordination, and other support for gifted students. Qualified gifted education personnel shall have professional knowledge about characteristics and needs of gifted students and appropriate instruction methods, and shall demonstrate professional competencies in gifted education pursuant to 6.64.18 NMAC;
- (6) describe how the LEA will manage and coordinate implementation of the program plan;
- (7) describe professional development activities to:
- (a) improve and enhance the skills, knowledge, and expertise of teachers and other personnel who provide instruction and other services to gifted students; and
 - (b) recruit and train new qualified gifted education teachers to fill any anticipated vacancies, if applicable;
- (8) describe efforts to collaborate with postsecondary educational institutions to provide professional learning of gifted education teachers;
- (9) provide evidence of the LEA's efforts to achieve equity by reporting:
- (a) the number of formally identified gifted students served through gifted programming by grade level, gender, race, ethnicity, twice-exceptionality, and linguistic diversity;
 - (b) the number of non-identified students served through gifted programming;
 - (c) the percentage of all students identified as gifted through formal identification processes;
 - (d) the number and proportion of gifted education teachers to gifted students; and
 - (e) methods and tools used to monitor the effectiveness of services as evidenced by gifted students' achievement and commensurate growth.
- [6.31.3.9 NMAC - N, 7/31/2023]

6.31.3.10 GIFTED FUNDING EDUCATION PLAN REPORTING REQUIREMENTS: LEA shall report annually the revenue and expenditure details regarding gifted education funds received through the state equalization guarantee formula, and gifted expenditures from Title I and Title II funds in the Education Plan pursuant to 6.29.1 NMAC.
[6.31.3.10 NMAC - N, 7/31/2023]

6.31.3.11 EVALUATION PROCEDURES FOR GIFTED STUDENTS:

- A. Areas of need. Student needs for individualized gifted education shall be based on evidence of:
- (1) general intellectual ability;
 - (2) creative or divergent thinking;
 - (3) problem solving or critical thinking;
 - (4) specific academic aptitude or achievement;
 - (5) artistic ability; or
 - (6) leadership ability.
- B. Universal screening. Each LEA shall establish a procedure to ensure that every student's potential to qualify as a gifted student is assessed by the end of grade three. Universal screening assessment results shall be used for referral for further assessment and may include group or individually administered assessments of academic achievement or cognitive ability.
- C. If a student transfers to an LEA without gifted identification documentation, the receiving LEA shall screen that student for potential identification as a gifted student.

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D. Analysis of data. The identification of a student as gifted shall include documentation and analysis of qualitative and quantitative data from multiple sources to assess areas of strength. Sources shall include:

- (1) standardized quantitative assessment data;
- (2) qualitative data from the assessment of student abilities by qualified individuals evaluating evidence such as collections of work, audio and video recordings, interviews, or observations; and
- (3) if applicable, performance assessments or standardized assessments of artistic ability.

E. Eligibility determination. A GIEP team shall determine that a student is eligible for gifted identification using both qualitative and quantitative gifted qualification data. The GIEP team shall consider:

- (1) information regarding a student's cultural, linguistic, and socioeconomic background;
- (2) any disabling condition pursuant to Section 22-13.6.1 NMSA 1978; and
- (3) evidence of the areas of need in at least but not limited to Paragraphs (1) through (4) of Subsection A of this section.

F. An LEA may apply to use an alternative identification process for all students subject to the approval of the department. Eligibility of a student will then be determined by a properly administered and collected, department-approved alternative protocol designed to evaluate a student's potential giftedness in at least the four categories of need in Paragraphs (1) through (4) of Subsection A of this section.

[6.31.3.11 NMAC - N, 7/31/2023]

6.31.3.12 GIFTED INDIVIDUAL EDUCATION PROGRAM:

A. To ensure the individual needs of each gifted student are met, the GIEP team shall create and update annually a GIEP document. A GIEP shall include but not be limited to the following information:

- (1) student demographic information;
- (2) area(s) of original qualification;
- (3) qualification data used to determine gifted eligibility;
- (4) educational needs for growth in area(s) of strength;
- (5) educational needs for growth in other area(s);
- (6) short term goals to address areas of need;
- (7) long term goals to address areas of need;
- (8) teacher and parent input;
- (9) student input;
- (10) planned course of study;
- (11) accommodations and modifications;
- (12) schedule of services;
- (13) transition information; and
- (14) prior written notice of actions proposed and either accepted or rejected by the LEA with rationale for acceptance or rejection.

B. The IEP of a twice-exceptional student shall take the place of the GIEP when it provides the information required in Subsection A of this section.

[6.31.3.12 NMAC - N, 7/31/2023]

6.31.3.13 GIFTED CASELOAD REQUIREMENTS: To ensure the specific needs of each gifted student are met, LEAs shall follow the caseload requirements found in Subsection I of 6.29.1.9 NMAC.

[6.31.3.13 NMAC - N, 7/31/2023]

6.31.3.14 GIFTED DISPUTE RESOLUTION:

A. To ensure the specific needs of each gifted student are met, LEAs shall:

- (1) Provide a copy of dispute resolution processes to parents and legal guardians at least once a year and when the following occurs:
 - (a) the first time in a school year that an annual GIEP meeting is scheduled; or
 - (b) a parent or legal guardian makes a request for a copy of the dispute resolution processes;
- (2) Provide explanations of a student's record upon request.
- (3) Seek to establish and maintain productive working relationships with the parents of each child the LEA serves and to deal constructively with disagreements.

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B. Informal dispute resolution. If disagreements arise between a parent and an LEA over a student's GIEP, either parents or the LEA may convene a new GIEP meeting at any time to attempt to resolve their differences at the local level without state-level intervention.

C. Alternative dispute resolution. Parents and LEAs may request that the department provide a facilitated GIEP meeting or mediation in order to resolve issues in the complaint filed with the department.

(1) Participation in alternative dispute resolution is voluntary, but participation in either mediation or a facilitated GIEP meeting is required prior to submitting a request for formal review pursuant to Subsection D of this section.

(2) The LEA and the parents or legal guardians shall notify the department in writing within five business days of reaching their decisions to jointly request one of these alternative dispute resolution options.

(3) A facilitated GIEP meeting or mediation session shall be completed not later than 30 days after the assignment of the facilitator or mediator by the department. The department may provide an extension of this deadline at the request of the parties.

(4) Mediation requirements. If the parties choose to use mediation, the following requirements apply:

(a) Any mediated agreement shall state that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any hearings of civil proceedings. Any such agreement shall also be signed by both the parent and the representative of the LEA who has authority to bind the LEA.

(b) If a mediated agreement involves GIEP issues, the agreement shall state that the LEA will subsequently convene a GIEP meeting to inform the student's services providers of their responsibilities under that agreement and revise the GIEP accordingly.

(c) The mediator shall transmit a copy of the written mediation agreement to each party within seven days of the meeting at which the agreement was concluded.

(d) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties in dispute.

D. Formal Review. If the parties are unable to resolve the issues through alternative dispute resolution, a written request for review by the department may be filed by the parent or legal guardian of the student. The department may conduct a review of the issues between the parties and the actions of the LEA related to the provision of gifted education.

(1) Requests for formal review by the department shall:

(a) be in writing;

(b) be submitted to the department;

(c) be signed by the parent or legal guardian of the child and have the requestor's

contact information;

(d) include the name and the school the child is attending;

(e) include a statement that the LEA has violated a requirement of an applicable

state law;

(f) contain a statement of facts on which the allegation of violation is based; and

(g) include a description of a proposed resolution of the problem to the extent

known.

(2) Any request that does not contain each of these elements will be declined, and a written explanation for the decision to decline will be provided to the requestor.

(3) The department shall provide written notice to the parties of its decision to proceed with a review of the matter. If the department chooses not to proceed with a review it shall provide reasons for its decision not to proceed.

(4) Parties may continue to negotiate a resolution of the issues during the pendency of a review by the department. If the issues are satisfactorily resolved through continued negotiations between the parties, the requestor shall submit to the department in writing a formal withdrawal of the request for review.

(5) Review and suggested resolution. If the department decides to review the matter, it shall request all necessary records and information from the LEA and parent or guardian to complete its review. The department, after review of relevant information, shall issue written findings regarding the LEA's compliance with the state law and rules related to gifted education and provide a suggested resolution to address the identified non-compliance or to otherwise resolve the issues between the parties.

[6.31.3.14 NMAC - N, 7/31/2023]

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6.31.3.15 ENFORCEMENT OF GIFTED RULE: If an LEA fails or refuses to comply with the applicable law or rules, and if the noncompliance or refusal to comply cannot be corrected or avoided by informal means, compliance may be effected by the department or the student’s parent or guardian by any means authorized by state or federal laws or rules.

[6.31.3.15 NMAC - N, 7/31/2023]

HISTORY OF 6.31.3 NMAC: [RESERVED]

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