

From: [Kenneth Stowe](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Fwd: Rule Feedback for: 6.29.1
Date: Thursday, July 6, 2023 1:23:25 PM

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From: **Kenneth Stowe** <stowe.kenneth@gmail.com>
Date: Wed, Jun 28, 2023 at 5:46 PM
Subject: Rule Feedback for: 6.29.1
To: <Rule.Feedback@ped.nm.gov>

Hello,

Please ensure that sections of 6.29.1 that discuss school improvement and planning explicit align and reflect the MLSS framework and Self-Assessment.

Thank you!

From: [Laurel Nesbitt](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] DRNM Comments, NMPED Proposed Rules, Sections 6.31.3 NMAC, 6.31.2 NMAC, 6.29.1 NMAC, and 6.19.7 NMAC
Date: Thursday, July 6, 2023 4:34:19 PM
Attachments: [23-7-6 Comments on NMPED Rulemaking.pdf](#)

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Dear Ms. Terrazas,

Attached, please find written public comment by Disability Rights New Mexico, addressing NMPED proposed rules as set out in the subject line of this message.

Regards,

Laurel Nesbitt, Senior Attorney

lnesbitt@drnm.org

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Disability Rights New Mexico

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Gary Housepian, Chief Executive Officer

Promoting and Protecting the Rights of Persons with Disabilities

July 6, 2023

Denise Terrazas

Policy Division

New Mexico Public Education Department

300 Don Gaspar Ave.

Room 121

Santa Fe, NM 87501

SUBMITTED VIA EMAIL AS PDF ATTACHMENT TO: rule.feedback@state.nm.us

RE: Proposed Rulemaking 6.31.3 NMAC (Gifted and Talented Students), Amendment to 6.31.2 NMAC (Children with Disabilities/Gifted Children), Amendment to 6.29.1 NMAC (General Provisions), Repeal and Replace of 6.19.7 NMAC (Demonstration of Competencies for High School Graduation)

Dear Ms. Terrazas:

Disability Rights New Mexico (“DRNM”) is the designated protection and advocacy agency in New Mexico whose purpose is to promote, protect, and expand the rights of individuals with disabilities. As part of that mission, DRNM advocates on behalf of students with disabilities across the state. In fulfilling that objective, DRNM is submitting the written comments below regarding new and amended rules proposed by the New Mexico Public Education Department (“NMPED” or “the Department”).

Rules Regarding Gifted and Talented Students

The Department proposes to eliminate language in 6.31.2 NMAC addressing gifted students, and instead proposes a wholly new and separate rule (6.31.3 NMAC) governing gifted education. DRNM strongly supports this proposal. The tangling of gifted education with special education has long been a source of confusion for parents and students. The new rule draws important and helpful distinctions between the rights of students with disabilities and those of gifted students (including distinct procedural safeguards and dispute resolution mechanisms). At first glance, it also seems to create a more detailed and robust system for serving the unique needs of gifted students.

DRNM is New Mexico’s designated Protection and Advocacy System

Moreover, the new rule does acknowledge twice-exceptional status, providing a definition in Section 6.31.3.7(S) and appropriately providing in Section 6.31.3.12(B) that an IEP for a twice exceptional student takes the place of a gifted individual education program (GIEP) when it includes the information required of a GIEP. However, it is not altogether clear whether the more common practice would be to hold a GIEP team meeting separately from an IEP meeting in the case of twice exceptional students. The definition of GIEP team in Section 6.31.3.7(H) includes as part of the composition of the team “at least one of the gifted student’s gifted education teachers, and if appropriate, at least one of [the] twice-exceptional student’s special education providers.” This suggests, without explanation, that there are to be two separate team meetings, but there may also be a risk of misunderstanding the fundamental fact that there still does need to be an IEP team meeting for twice exceptional student. The rules would benefit from greater clarity—both in Section 6.31.2 and Section 6.31.3—as to the expectations for annual team meetings (IEP and/or GIEP) for twice exceptional students, and it may also be helpful to define “twice exceptional” in Section 6.31.2.7, cross-referencing Section 6.31.3.

Rules Clarifying Ongoing Right of FAPE Following Receipt of Alternative Diploma

DRNM also applauds the Department’s initiative in clarifying in various rules (for example, Sections 6.29.1.9, 13, 6.31.2.11(G), and 6.19.7.8(G)) that students with disabilities who graduate by any means other than a standard diploma are entitled to receive FAPE until they either meet standard diploma requirements or complete the academic year in which they turn 22. These clarifications, which align squarely with IDEA, again help to address confusion over FAPE obligation that we at DRNM have noted in some districts in recent years.

Elimination of 45-school day Limitation, Substitute Teachers

It is unclear why the Department has chosen to remove from Sections 6.29.1.9(C)(9)(c) and (d) the 45-school day limitation on the duration a class may be taught “by a substitute teacher, in lieu of a licensed teacher under contract.” The rule as currently written already allows for “deviations” from this requirement upon the Department’s approval of a superintendent’s written request. Removing both the exception and the rule is a step in the wrong direction. It enables and facilitates what is already a dangerous trend toward overuse of substitute teachers who are not only unlicensed, but are also unqualified and unprepared to meet the more substantial needs of students with disabilities. In particular, DRNM has been concerned in recent years with the staffing of behavior classrooms/programs with long-term substitute teachers, often resulting in punitive or exclusionary discipline, unnecessary use of restraint or seclusion, loss of instructional time, and failure to serve children with disabilities in their least restrictive environment. DRNM asks that the Department restore the 45-school day limitation (along with the exception provided in Section 6.29.1.9(C)(9)(d)) or otherwise provide appropriate limitations on LEAs’ reliance on substitute teachers.

MLSS and the SAT Process

In Section 6.29.1.9(E), the Department proposes to clarify some of the remaining confusion over the ongoing role of the SAT team in the MLSS intervention system. Specifically, DRNM appreciates that the rule further emphasizes (consistent with the recently amended evaluation rule, Section 6.31.2.10) that a parent may request initial evaluation for special education at any time (before, during, or after implementation of MLSS), and especially that the proposed amendment removes language suggesting that a student “shall be referred to the SAT” if available information suggests the student needs “educational support for learning or behavior.” To the extent there are other references to SAT in other rules which conflict either with the MLSS rules or the evaluation rules, DRNM similarly urges the Department to make further clarification where necessary.

Removal of Detail or Standards in Various Rules

There are several instances in the proposed amendments in which the Department eliminates detail or standards without clear explanation as to why that is being done. In particular, the following amendments were concerning:

- Section 6.29.1.8(A): In describing District and charter school responsibilities for the Education Plan and NM School DASH, the proposed rule eliminates four questions which formerly guided such plans, and now states that districts “shall be guided by questions determined by the department.” It is concerning that these questions are not articulated, nor is there any description of the process by which the Department will determine and disseminate the questions. If this information is included elsewhere in the rule, it seemingly should be emphasized for greater clarity.
- Section 6.29.1.9(J): The Department proposes to eliminate the requirement for length of school day entirely. The narrative explanation of this amendment notes that it “removes requirements for length of school day to be promulgated in other rule.” However, there does not seem to be a separate rule in this round of proposed rulemaking that addresses length of school day. Is a new rule intended to be promulgated at a later time? If so, what requirements will govern length of school day in the meantime?
- Section 6.19.7: This amendment, according to its narrative explanation, proposes to “minimize requirements for demonstrations of competency,” but there is no indication either in the rule itself or in the explanation of the amendment why it is a helpful or positive change to minimize requirements in this way. What is the Department aiming to accomplish with these changes? As in the case of the questions governing Education Plan and NM School DASH, the Department seemingly seeks to provide for flexibility in establishing requirements for demonstration of competency by “annually develop[ing] and publish[ing] a graduation manual” setting out graduation requirements and options for demonstration of competency. See Section 6.19.7.8(A). But it is also possible to see

some risk in allowing for frequent or arbitrary changes in these standards. Again, to the extent the Department carries through with this amendment, it would help to explain why minimizing competency requirements is an improvement, particularly in light of the State's obligation under *Martinez/Yazzie* to ensure that students are college or career ready.

Conclusion

DRNM appreciates the opportunity to participate in the comment period for this proposed rulemaking. While some of the proposed amendments are clear improvements on the current rules, as set out more fully above, there are also changes which seem likely to amplify challenges already faced by students with disabilities. It is our hope that the Department will meaningfully consider our input, and are happy to answer any questions you may have about the specific suggestions made here.

Sincerely,


Laurel Nesbitt, Senior Attorney