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, 22-2C-3, 22-2C-4, 22-5-13, 22-13-1.1, and 22-13-14 NMSA 1978.

Rule adoption date:
July 20, 2023

Rule effective date:
July 31, 2023

Reasons for adopting rule:
The purpose of the rulemaking is to (1) require schools to implement, self-assess, and report Multi-Layered Systems of Support and (2) to make changes related to the issuance of standard, modified, and ability diplomas, in alignment with the proposed amendment to 6.31.2 NMAC, Children with Disabilities.

Rule information:
The proposed amendment of this rule adds requirements for MLSS implementation, self-assessment, and reporting; removes conflicts with the requirements of IDEA related to FAPE, after the receipt of a diploma through the alternative programs of study; updates all references to the annual Education Plan and NM School DASH; and removes requirements for length of school day to be promulgated in other rule.

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. For more detail on the changes between the proposed rule and the rule as adopted, reasons for changes, or information as to why the Department may not have accepted comments or suggested changes, please see "6.29.1 NMAC_Response to Public Comment," attached.

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

Gregory Frostad

Check if authority has been delegated

X

Title:

Assistant Secretary of Policy, Research and Technology

Signature: **(BLACK ink only OR Digital Signature)**

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Date signed:

07/20/2023

RULE CHANGES	
Section	**Change**
6.29.1.6 Objective	• Delete "The New Mexico content standards with benchmarks and performance standards specify the goals for instruction" and renumerate subsequent subsections.
6.29.1.7 Definitions	• Insert definition of "Certified district reviewer" at Subsection J. • Replace "Educational plan for student success (EPSS)" with "Education plan" in Subsection Q. • Delete Subsection T. "Gifted child" definition. • Insert at Subsection AC "NM School DASH" Definition and renumerate subsequent subsections. • Delete Subsection AD "School improvement framework" • Insert at Subsection AG "Small group setting" and renumerate subsequent subsections. • Insert at subsection AA the words "'MLSS Self-assessment' means analysis of MLSS implementation that each school shall submit in a form and by a due date determined by the department. The MLSS Self-assessment shall contribute to the NM School DASH, but it shall not be a component in the evaluation of a school by the department." • Renumerate subsequent subsections subsequent subsection identifiers. • Delete the subsections with definitions of "ability program of study" (A), "career readiness program of study" (H), and "standard program of study" (AG) and renumerate the following subsections as needed.
6.29.1.8 Implementation	• Delete "educational plan for student success (EPSS)" and insert in its place, "Education Plan for all school districts and charter schools. At the school site level this regulation shall assist in the implementation of standards for excellence through the use of the NM School DASH " • Delete "The primary mechanism for planning and implementation is the educational plan for student success (EPSS)" in Section A. • Insert "and charter school" before the word "responsibilities". • Replace "EPSS" with "Education Plan and NM School DASH" in the first sentence. • Replace "EPSS is a strategic improvement plan that is" with "Education Plan and NM School DASH are strategic improvement plans that are" • Insert "and each charter school" after "Each district" • Replace "plan" with "Education Plan" after the word "evaluate the" • Replace "EPSS" with "NM School DASH" or "Education Plan and NM School DASH" throughout the section. • Insert "and implemented" after the word "developed" • Insert the sentence "LEAs shall have each NM School DASH evaluated and approved by a certified reviewer." • Replace the number "600" with the number "200" before the word "students" • Replace the words "the following four questions" with the word "questions determined by the department." • Delete Paragraphs (1) through (4).

6.29.1.9 Procedural Requirements	• Insert "or charter school governing body" after the words "board of education" in Section A. • Delete the words "In addition to the powers and duties set out in Section 22-5-4 NMSA 1978 and Section 22-1-1 et seq. NMSA 1978 of the Public School Code" • Insert "The" at the start of the last sentence and "or charter school governing body" before the word "shall" • Delete " the district's department approved improvement plan and" after the word "support" • Replace the words "improvement plan, . . . " with "NM School DASH and MLSS Self-assessment for each school site in improvement status. • Delete "Section 22-5-4 NMSA 1978 and" from Paragraph (12) of Section B. • Replace "EPSS" with "Education Plan" in Paragraphs (2) and (3). • Replace "EPSS" with "MLSS Self-assessment and NM School DASH" after the words "site-level" and "charter school's" in Paragraph (3) of Section C. • Insert "or for students who demonstrate a need for advanced instruction" after the word "behavior" in Section E. • Delete the sentence from Section E that about "referral to SAT" • Replace the word "recidivism" with "regression, then" in Paragraph (3) of Section E. • Delete "without a referral to SAT or an evaluation to determine eligibility for special education and related services" from the first sentence of Paragraph (4). • Insert "evaluation" after the words "initial special education" in Paragraph (4). • Insert Paragraphs (6)-(11) of Subsection E with requirements for MLSS. • Delete "Effective July 1, 2009" in Paragraph (5) of Subsection F. • Delete Subsection J and renumerate subsequent subsections. • Delete "in order" from Paragraph (1) of new Subsection J. • Insert "Receipt of a conditional certificate of transition shall not end a student's right to FAPE" before the words, "In addition" in 6.29.1.9(J)(13)(a) • Replace "using any of" with "through" in 6.19.1.9(J)(13)(b) • Insert "Items" after the words "described in" in 6.29.1.9 (J)(3)(b)(i) • Replace "K" with "J" after the word "Subsection" in 6.29.1.9(J)(3)(b)(i). • Insert language about regular high school diplomas and eligibility for FAPE based on federal regulations. • Replace "career readiness alternative" with "modified" before "program of study" in 6.29.1.9(J)(3)(b)(ii) • Replace "graduation examination(s) administered pursuant to Subsection K of Section 22-13-1.1 NMSA 1978" with "standards-based assessments required for high school students" in 6.29.1.9(J)(3)(b)(ii) • Replace "graduation examination and is unable to meet the minimum requirements on all sections of the assessments and achieve a level of competency, the IEP team can set the minimum passing scores" with "required high school assessments, the student shall achieve a level of competency pre-determined by the student's IEP team on the current state-approved demonstration of competency options for graduation" in 6.29.1.9(J)(3)(b)(ii)

- Insert language in 6.29.1.9(J)(3)(b)(ii) about continuation of FAPE after receiving a diploma through a modified program of study
- Replace "graduation examination(s) administered pursuant to Subsection K of Section 22-13-1.1 NMSA 1978" with "standards-based assessments required for high school students" in 6.29.1.9(J)(3)(b)(iii)
- Replace "The" with "Once the student has participated in the state-required high school assessments, the" and replace "graduation examination or the state-approved alternate assessment" with "state-approved demonstration of competency options for" in 6.29.1.9(J)(3)(b)(iii)
- Insert language in 6.29.1.9(J)(3)(b)(iii) about continuing eligibility for FAPE after earning a diploma through an ability program of study.
- Replace "The new requirements for the career readiness and ability pathways become effective beginning with students graduating in 2009" with "Students receiving a diploma through any of the programs of study are permitted to participate in all graduation activities" in 6.29.1.9(J)(3)(c)
- Insert at Subparagraph (d) language about students' choice to exit high school after earning a diploma from a modified or ability program of study and their continued entitlement to FAPE. Renumerate subsequent subsections
- Replace "K" with "J" after the word "Subsection" in 6.29.1.9(J)(3)(i)(i).
- Replace four instances of "career readiness" with "modified" in 6.29.1.9(J)(3)(i)(iii)
- Insert "receives a certificate of transition but" before the word "does not," add "not" before "be considered" and delete "as" before "a dropout" in 6.29.1.9(J)(3)(k)
- Replace "modified" with "different" in 6.29.1.9(J)(3)(m)(iii)
- Replace "K" with "J" after the word "Subsection" in 6.29.1.9(J)(3)(o)
- Replace "career readiness" with "modified" after "diploma through a" and delete "the" before "FERPA" in 6.29.1.9(J)(3)(o)
- Delete Subparagraph (p) from 6.29.1.9(J)(3)
- Insert "and" after "appearance" and delete "and effect" after "content" in 6.29.1.9(J)(3)(q)
- Replace "EPSS" with "Education Plan" or "NM School DASH" as appropriate throughout Subsection K.
- Replace "goals/focus areas (performance indicators)" with "goals and desired outcomes" in 6.29.1.9(K)(3)(b)(iv).
- Insert "and NM School DASH monitoring" after "evaluation" in 6.29.1.9(K)(3)(c)(ii)
- Replace "P" with "O" after "Subsection" in 6.29.1.9(K)(6)(B)(vii)
- Insert the words "and MLSS Self-assessment" after the words "NM School DASH" in paragraph (1) of Section A and Paragraph (3) of Section C.
- Insert the words "MLSS Self-assessment and" before the words "department approved improvement plan" in Paragraph (1) of Section B.
- Undelete Subparagraphs (c) and (d) of Paragraph (9) of Subsection (C).
- Replace the word "LEAs" with "Schools" at the start of Paragraph (6) of Subsection E. Student intervention system.

6.29.1.11 Program Requirements	• Delete the last sentence of Paragraph (1) of Subsection A, "Each school district's aligned grade level and subject area curricula shall be in place for mathematics by the 2009 school year." • Delete Paragraph (5) of Subsection A. • Replace "EPSS" with "Education Plan" and/or "NM School DASH" as appropriate throughout Subsections A-I. • Delete Paragraph (5) of Subsection D. • Delete Paragraph (4) of Subsection E. • Delete Paragraph (4) of Subsection F and renumerate subsequent subsections. • Delete Paragraph (3) of Subsection H. • Delete Paragraph (2) of Subsection I. • Add Subsection J which requires gifted education programs in required subject areas be assessed as part of the Education Plan process, and support the local curriculum, Education Plan, and NM School DASH.

Response to Public Comment
6.29.1 NMAC, General Provisions

Public Comment Period: May 31, 2023 - July 6, 2023

The New Mexico Public Education Department (PED) received 1 public comment for 6.29.1 NMAC General Provisions. 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 regarding students with disabilities	
Summary of Comments	**PED Response**
Public comment included support for amendments to 6.29.1.9 and 6.29.1.13 NMAC clarifying that students with disabilities graduating by any other means 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, which is aligned with IDEA.	The Department concurs with comments in support of the amendment.
Public comment included support for the removal of language suggesting that students be referred to SAT if in need of educational support for learning or behavior and for the complete independence of special education evaluation requests from MLSS processes.	The Department concurs with comments in support of the amendment.

Deleting specific requirements	
Summary of Comments	**PED Response**
Public comment included concern about deleting the maximum 45-school-day limitation for classes taught by substitute teachers, requesting that we restore the 45-school-day limit along with the exception provided in that section, because it unduly impacts the high-demand subjects, like special education.	The Department concurs that removing the 45-day limit may disproportionately and negatively impact students of special populations in high-demand subject-areas and high-vacancy-rate schools. The department will make changes to the proposed amendment to restore these paragraphs and items of (c) and (d) of 6.29.1.9(C)(9).
Public comment included concern about removing detailed requirements from rule and placing it in department guidance in Education Plan and NM School DASH, Section 8**.**	Moving certain details from the requirements in rule to department guidance for Education Plan and NM School DASH will provide the department greater responsiveness and flexibility without reducing the rigor of the requirements.
Public comment included concern about deleting requirements for the length of school day in Subsection J of Section 9	School day and year length requirements were duplicated into this rule. Deleting references to length of school day and year requirements in the proposed rule focuses requirements for length of school day and year in 6.10.5 NMAC School Calendar Requirements, where they are more appropriately housed.