

# 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 22-2-1, 22-2-2, 22-13-5 and 22-13-6.1 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 delete sections about gifted education, which will be provided for in the proposed new rule, 6.31.3 NMAC, and to make changes related to the issuance of standard, modified, and ability diplomas.

### Rule information:

The rule deletes standards for gifted education. Additionally, the rule was edited to remove conflicts with the requirements of the Individuals with Disabilities Education Act (IDEA), related to the federal provision that guarantees children with disabilities the right to a free appropriate public education (FAPE), after the receipt of a diploma through the alternative programs of study.

### 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 "6.31.2 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



Title:

Assistant Secretary of Policy, Research and Technology

Signature: (BLACK ink only OR Digital Signature)

Date signed:

DocuSigned by:  
  
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07/20/2023

Response to Public Comment  
6.31.2 NMAC, Children with Disabilities

RULE CHANGES	
Section	Change
6.31.2	<ul style="list-style-type: none"><li>• No changes were made.</li></ul>

**Response to Public Comment**  
6.31.2 NMAC, Children with Disabilities

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

The New Mexico Public Education Department (PED) received 1 public comment for this rule. 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.

<b>Addressing Gifted Education and Special Education in Different Rules</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Public comment included support for having separate rules for gifted education and special education.	The Department appreciates the feedback. It has been the Department’s understanding that detangling gifted education and special education will be helpful for parents, students, and – in general – gifted education and special education stakeholders.
<b>Right of Free Appropriate Public Education</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Public comment included support for clarifying that students with disabilities who graduate by any means other than a standard diploma are entitled to a free appropriate public education (FAPE).	The Department appreciates the feedback. These changes align with the Individuals with Disabilities Education Act (IDEA).
<b>Student Supports</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Public comment included support for clarifying that a parent may request initial evaluation for special education at any time.	The Department appreciates the feedback. The Department supports taking steps that allow educators to make data-driven decisions that support students and allows teachers to intervene quickly.
<b>Technical Cleanup</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Public comment included the recommendation to provide clarity by adding the definition for “twice exceptional” to Subsection 7 and cross-referencing 6.31.3 NMAC.	The Department will release guidance in August that will provide clarity regarding “twice exceptional.”