

From: [Todd Knouse](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] General question about rule feedback
Date: Thursday, June 1, 2023 2:21:38 PM

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I have a general question about feedback for proposed rule promulgations.

Can feedback be provided in writing, or does one have to report to the public meeting? I've never done this before.

--

Todd Knouse
Head of School and Chief Visionary
New Mexico International School
An International Baccalaureate World School
7215 Montgomery Blvd. NE
Albuquerque, NM 87109 USA
(505)503-7670
www.nmis.org



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From: [Todd Knouse](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Rule Feedback for proposed promulgation of 6.31.3
Date: Friday, June 2, 2023 2:25:41 PM

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Dear members of the Policy and Legislative Affairs Division of the NM Public Education Department:

I am writing with feedback and input on the proposed rulemaking for [NMAC 6.31.3 "Gifted and Talented Students."](#) This rule is proposed as a new rule. I have three points of feedback and provide proposed alternatives for each.

Feedback Point #1: Gifted programs are statutorily optional, yet the proposed rule suggests otherwise.

The statutory authority for the proposed rule is [NMSA 22-13.6.1](#). The language of this statute says "Each school district offering a gifted program shall..." and proceeds to list requirements for programs. The language of this phrase suggests that offering gifted programming is not required, but *should an LEA choose to do so*, then there are certain requirements. Nonetheless, the proposed language in 6.31.3.8 and 6.31.3.9 imposes requirements for LEA's regarded gifted programs.

Proposed resolution: I think the proposed language in 6.31.3.8 and 6.31.3.9 that says "Each LEA shall..." should be amended to say "Each LEA opting to offer gifted services to its students shall..."

Feedback Point #2: The formal state-level dispute resolution process is unnecessary and inconsistent with other dispute resolution matters, and will create undue burdens for LEA's as well as the PED.

I am concerned with the proposed language in section 6.31.3.14 "Gifted Dispute Resolution." This new language would create a lengthy and cumbersome dispute resolution process outside of the LEA. I think this process is unnecessary in its entirety, as any such disputes between a family and an LEA regarding gifted screening, eligibility determination and services should be solely between the family and the LEA. I am also concerned about the costs of such escalated resolution procedures that are not otherwise required. These costs come in both financial and in human resources. Speaking as a school administrator, I don't think the drafters of this language appreciate the volume of disputes that will escalate to a state-level given the nature of this topic.

It is true that there are required resolution processes for special education under IDEA. However, *giftedness is not part of federal special education legislation*. Why is giftedness being granted special status by creating a dispute resolution process that is not available for other optional programs? To my knowledge, there is no state level dispute resolution process for matters related to other non-federal programs such as PE participation, language instruction, art instruction, and so on. *Why make this exception for this one program?* What special status is warranted for giftedness? Disputes about gifted programs should be resolved locally. Adding state-level participation in a dispute resolution on this matter is unnecessary, inconsistent with other programs, and will create undue financial and human resource burdens on the LEA and the PED.

Proposed resolution: Removal of section 6.31.3.14, or significant revision that requires LEA's to create dispute resolution policies and procedures for giftedness matters that do not include state-level participation.

Feedback Point #3: Statute does not permit additional evaluation areas for giftedness that are proposed in the rule.

The language of 6.31.3.11 "Evaluation Procedures for Gifted Students" creates additional areas of evaluation for giftedness that are not present in the current language in NMAC. Specifically, it lists "artistic ability" and "leadership ability." Regrettably, however, these areas of evaluation are not listed in [NMSA 22-13.6.1](#), which is the statutory authority for the proposed rule promulgation. Adding additional evaluation areas in rule that are not expressly permitted in statute is inconsistent with previous actions of the PED.

[NMSA 22-8B-4.1](#), which lists allowable enrollment preferences for charter schools, previously did not specifically allow charter schools to allow enrollment preference for "children of employees." This lack of language allowing this practice was interpreted by the PED to be a prohibition of this practice. Yet now the same principle is being ignored. This seems an arbitrary and capricious interpretation of these two statutes. [NMSA 22-13.6.1](#), lists the areas allowed for gifted evaluation. Presumably if the legislature intended for additional areas of evaluation to be considered, it would have said so in its language.

Proposed resolutions: I suggest one of three resolutions: 1. Removal of the additional areas of evaluation for giftedness from proposed rule language. 2. Seeking legislative amendments to [NMSA 22-13.6.1](#) adding the proposed areas of evaluation. 3. Reversal of previous interpretations of other laws that suggest "lack of explicit approval" equates to "prohibition of practice." This would, for example, allow charters to add enrollment preferences not specifically listed in [NMSA 22-8B-4.1](#)

Thank you for your willingness to hear my input and entertain my proposed solutions. I stand ready for any questions members of this division may have for me.

In camaraderie,

--

Todd Knouse

Head of School and Chief Visionary

New Mexico International School

An International Baccalaureate World School

7215 Montgomery Blvd. NE

Albuquerque, NM 87109 USA

(505)503-7670

www.nmis.org



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From: [EJ Marrufo](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] PUBLIC COMMENT: NMAC 6.31.3--Gifted & Talented Students
Date: Wednesday, June 7, 2023 3:56:21 PM

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Hello,

Thank you for the opportunity to provide public comment on proposed rule changes. These comments and proposed language changes pertain to NMAC 6.31.3 (Gifted & Talented Students).

Recommendations:

1. Add **Gifted Advisory Team (GAT)** to definitions-

"School level team focused on identification of gifted students, composed of school and district staff knowledgeable about current gifted research and applicable gifted statutes, administrative code, and district policies."

2. Re: 6.31.3.11 E.- **"Eligibility determination-**

The proposed rule gives determination authority solely to the GIEP team, which includes parents, students, and classroom teachers, none of whom may have enough gifted expertise to make that determination.

It should read as follows, "a Gifted Advisory Team (GAT) shall determine that a student is eligible for gifted identification using both qualitative and quantitative gifted qualification data."

Again, thank you for the opportunity to provide comments.

Elizabeth J. Marrufo, Ph.D.
575.640.7593
mna4011@gmail.com

From: [Andrea Fletcher](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Gifted Rule feedback
Date: Wednesday, June 7, 2023 4:12:59 PM

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Here is some feedback for the Gifted and Talented Students rule 6.31.3:

- Add Gifted Advisory Team to definitions- "School level team focused on identification of gifted students, comprised of school and district staff knowledgeable about current gifted research and applicable gifted statutes, administrative code, and district policies.
- 6.31.3.11 E.- Eligibility determination- **A Gifted Advisory Team (GAT)** shall determine that a student is eligible for gifted identification using both qualitative and quantitative gifted qualification data. *Currently, the rule gives determination authority to the GIEP, which includes, parents, students, classroom teacher, none of whom may have enough gifted expertise to make that call and will certainly have implicit bias.*

Andrea Fletcher

From: [rreynaud](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] 6.31.3 NMAC, Gifted and Talented Students. COMMENTS
Date: Saturday, June 10, 2023 12:03:58 PM

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Hello New Mexico PED, Thank you for the opportunity to comment on New Rule 6.31.3 as follows:

1. Please delete 2 paragraphs: 6.31.3.7E. (Creative or divergent thinking) and 6.31.3.7L. (Leadership ability). These paragraphs allow students to get in by Subjective rather than Objective assessment. Please see this paragraph referencing "divergent thinking", excerpted from Edutopia online (S. Goodman, Aug 12, 2015), which reinforces my point:

"Teachers also might find divergent thinking and behavior a challenge when students ignore directions and rules, and, if we're honest with ourselves, display personality traits that operate outside societal norms. These non-normative students, kids like the character Ludovic, who are transgender or who identify as atheists, for example, might be considered divergent in many of our communities. It's up to us as school administrators and teachers to ensure that good judgment extends beyond what might be considered current social norms and take into account what's best for our students' spirits, humanity, and ultimate sense of belonging."

Summary of my remarks: "Divergent thinking" and "Leadership" should not be in the New Mexico gifted program. The inclusion of these two dumbs-down the Gifted program. The tragedy is that NM is a hispanic-majority State. These "subjective" measures reveal the NM PED's *condescending pedagogy of inclusion* of cheating for the State's Hispanics. Merit is the only measure, anything else is cheating and unacceptable.

By the way, my Mom is hispanic southern NM and my Dad anglo from Albuquerque.

V/R

Rick Reynaud, P.E.

Coalition of Conservatives in Action (CCIA) Education committee
Las Cruces, NM

From: [Deborah Henwood](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Proposed rule 6.31.2 Gifted and Talented.
Date: Friday, June 16, 2023 12:13:39 PM

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I have concerns over the new process being put forth about dispute resolution for giftedness. Giftedness is not a disability and not an eligibility in the DSM. The formal state-level dispute resolution process is unnecessary and inconsistent with other dispute resolution matters and will create undue burdens for LEA's as well as the PED. I am concerned with the proposed language in section 6.31.3.14 "Gifted Dispute Resolution." This new language would create a lengthy and cumbersome dispute resolution process outside of the LEA. I think this process is unnecessary in its entirety, as any such disputes between a family and an LEA regarding gifted screening, eligibility determination and services should be solely between the family and the LEA. I am also concerned about the costs of such escalated resolution procedures that are not otherwise required. I am concerned that this process will take away from families who have children protected by IDEA and need the resources for special education disputes. These costs come in both financial and in human resources. Speaking as a school administrator, I don't think the drafters of this language appreciate the volume of disputes that will escalate to a state-level given the nature of this topic. Being gifted is not a disability and should not be treated as such. It is true that there are required resolution processes for special education under IDEA. However, giftedness is not part of federal special education legislation. Why is giftedness being granted special status by creating a dispute resolution process that is not available for other optional programs? To my knowledge, there is no state level dispute resolution process for matters related to other non-federal programs such as PE participation, language instruction, art instruction, and so on. Why make this exception for this one program? What special status is warranted for giftedness? Disputes about gifted programs should be resolved locally. Adding state-level participation in a dispute resolution on this matter is unnecessary, inconsistent with other programs, and will create undue financial and human resource burdens.

Deborah Henwood
School Leader
Montessori of the Rio Grande Charter School
1650 Gabaldon NW
Albuquerque, NM 87104
505 842 5993 ex 20700

From: [Allison Marks](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Feedback for Rule 6.31.3 NMAC
Date: Wednesday, June 21, 2023 9:08:37 AM

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Add the following: STUDENT TRANSFERS WITH A GIEP: A student who transfers to an LEA and has an GIEP in place shall receive services commensurate with the GIEP until a new GIEP is established. A GIEP team meeting shall be held within ten (10) day calendar days of a student enrolling as a transfer student.

From: [Christopher Vian](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Public Comment for 6.31.3 NMAC: Gifted and Talented Students
Date: Tuesday, June 27, 2023 5:06:29 PM

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To whom it may concern,

I am writing in my capacity as a private citizen and not as an employee of the NMPED. As such, all opinions reflect my personal beliefs and should not be construed as the position of the NMPED.

I am writing to offer my whole-hearted support to the creation of 6.31.3 NMAC, Gifted and Talented Students for multiple reasons. While I have many reasons for supporting this rule change, I will focus on two: the current identification system mandates poor identification practices which under identify students and the lack of a systematic mediation and a state-level dispute resolution process.

Both the Purdue University “Access Denied” report and the report in response to HM 33 (2022) highlighted the vast inequity in identification of gifted students across the state of New Mexico. Under current rule, all parts of the education environment has allowed up to 23,000 students to be under-identified and countless more to be provided with substandard services. The NMPED has ignored gifted for so long that it is currently mandating identification practice which are 30 years out of date. These identification practices have ensured that students who have a disability, are English Language Learners, are from disadvantaged socio-economic backgrounds, who reside in rural areas, who are Hispanic, and who are Indigenous are drastically under-identified. Current gifted identification practices are not backed by research nor are they supported by effective practice in the field.

Having worked for a district that illegally altered gifted students’ IEPs without the support of either the parent or the IEP team, I assert that one of the most important parts of the proposed rule change is the ability for parents and guardians to engage in a mediation process and to have a state-level dispute resolution process. HM 33 shows that a third of all LEAs in New Mexico do not have gifted identification and programming. This is inherently unethical and ultimately illegal as gifted is required by statute. We constantly discuss local control of education, but local control has given us districts and charter schools where gifted is viewed as optional and not as something that is legally mandated under 22-13-6.1 NMSA 1978—Gifted children, determination. It is only by ensuring accountable identification processes and service provision that we can ensure that our students receive the education they have a legal right to.

Christopher Vian

From: [Neily Snook](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Feedback and support for proposed rule change for 6.31.3 NMAC, Gifted and Talented Students
Date: Tuesday, June 27, 2023 7:01:24 PM

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New Mexico Public Education Department;

The intent of this email is to express my support for the proposed rule change for 6.31.3 NMAC, Gifted and Talented Students.

I support the rule change in its entirety and wish to highlight a few sections of this proposed rule change which are essential for supporting the gifted students of New Mexico.

Support for 6.31.3.10 Gifted Funding Education Plan Reporting Requirements:

- This element of the proposed rule change is essential for equal access and funding of gifted education across New Mexico.
- There are many school districts in our state that do not specifically allocate gifted education funds to providing gifted services.
- It is imperative that school districts are held accountable for the use of these funds for New Mexico gifted students.

Support for 6.31.3.11.E. Eligibility Determination:

- A quick overview of the composition of gifted students in school districts across New Mexico will show that specific cultural, linguistic, and socioeconomic groups are underrepresented.
- This section of the proposed rule change will help correct this concern and ensure the demographics of gifted students in a school district represent the general population demographics of that district.

Support for 6.31.3.11.B Universal Screening:

- Due to a large number of factors, including general education teachers lacking in experience and knowledge of how to identify potentially gifted students, school districts relying on teacher recommendations for gifted screening are struggling to identify gifted students.
- Universal screening could help remedy this concern, as well as reduce the impact of teachers' unconscious bias, which may be preventing students from being considered for gifted services.
- Current interim evaluation systems already in place can reduce any financial impact universal screening may place on school districts.

Support for 6.31.3.11.A: Evaluation Procedures for Gifted Students:

- The addition of artistic and leadership ability to the list of areas of evidence of

giftedness recognizes the diversity of gifted students.

- With the same understanding that the skill set of an exceptional football athlete does not match the skill set of a state champion tennis player, gifted education in New Mexico should represent a wide range of areas of giftedness.
- Adding artistic and leadership ability to the list of areas of giftedness recognized in New Mexico public schools is a positive move toward acknowledging and celebrating the great diversity present in our state.

I encourage you to accept the proposed rule change for 6.31.3 NMAC, Gifted and Talented Students, in its entirety. This proposed rule change will address some of the greatest areas of need in identifying and serving the gifted students of New Mexico.

Thank you for the energy you invest in the youth of New Mexico.

--

Dr. Neily C. Snook

National Board Certified Teacher

President - New Mexico Association for the Gifted

Aztec Municipal School District Elementary Enrichment Teacher

From: [Shaughnessy, Michael](#)
To: [FeedBack, Rule, PED](#)
Cc: [Shaughnessy, Michael](#)
Subject: [EXTERNAL]
Date: Tuesday, June 27, 2023 8:10:58 PM

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I would like to see all New Mexico school districts held accountable for how gifted education funds are spent, I want to share my support of 6.31.3.10.

In terms of Diversity, Equity and Inclusion I want to express my support of universal screening in 6.31.3.11.B.

I support 6.31.3.11.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."

From: [Ursula Kelly](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] PED gifted funding, screening, factors, etc.
Date: Wednesday, June 28, 2023 6:06:44 PM

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Funding:

"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." you know NMPED provides approximately \$380 per gifted student, per year to NM school districts? Some of our NM school districts do a fantastic job of ensuring these funds support gifted programming; however, other NM school districts do not specifically allocate these funds to gifted programs.

- I would like to see all NM school districts, particularly APS, held accountable for how gifted education funds are spent. I have been teaching a full time gifted program in APS for twenty years and have NEVER been allocated district money for my classroom. It's a running joke amongst gifted teachers that we get all our furniture and supplies out of the dumpsters and buy consumables with our own money. I am fully in support of 6.31.3.10.

Universal Screening:

"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."

- I am concerned about the discrepancy across NM schools and districts regarding teachers' ability to identify and refer students for gifted screening. I have seen current rules ignored in order to artificially manipulate the statistics for gifted referrals; APS uses only the cogat scores to eliminate students from participation in gifted programs. Over the years many students who would have benefited from small group, rigorous instructional opportunities have been left out because of one score on a timed standardized test. Sole dependence on a standardized test score undermines the professional knowledge of teachers and excludes many students who just don't test well. Being a good test taker does not equal gifted. I am fully in support of 6.31.3.11.B

Gifted Artistic and Leadership Abilities:

"6.31.3.11.A: 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."

- I am completely in favor of broadening the acceptable definition of gifted to include aspects of intelligence other than what can be tested in a timed,

standardized test. I also appreciate the acknowledgement of evidence of need that can be provided by the teachers who know and work with any individual student. I am in support of 6.31.3.11.A

Considering Culture, Language, and Socioeconomic Factors:

Are you concerned that certain groups of students appear to be missing from NM gifted education programs? (Including students of a specific culture, students who speak a language other than English, or students of a lower socioeconomic background)

Then you may wish to discuss your support of section 6.31.3.11.E

"6.31.3.11.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."

- I have seen certain groups of students be left out of NM gifted programs and even the referral process. Standardized tests have bias. Also, boys get referred because they act out when they are bored. Secondly, I have taught Native American children who were truly gifted in ways that would never show up on standardized tests. They could memorize the complicated steps of a dance, but struggled with time tables. Just recently a student at my school (whose TWIN BROTHER qualified) did not pass the cogat screening because it was timed and her cerebral palsy prevented her from answering the questions within the allowed time. This is blatant discrimination. I fully support 6.31.3.11.E.

Thank you for the opportunity provide feedback.

Sincerely,

Ursula Kelly

Teacher of the Gifted, APS

From: [Wendy Dove](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Gifted Education
Date: Thursday, June 29, 2023 6:09:21 PM

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To whom it may concern,

I have been privileged to teach gifted students in Santa Fe Public schools for the last 15 years. One reason I feel strongly that my job is vital is the research that I have read that states that not all gifted students reach their potential. Instead they drop out of school, under-achieve, or become under-employed adults, or even commit suicide. If these students are supported appropriately as they reach their potential, our state will develop the future creative problem-solvers, leaders, and business owners we so desperately need.

During my tenure, I have seen many advantages and disadvantages to the current identification and IEP process. One major advantage is that gifted students in the state of New Mexico are guaranteed the necessary adjustments to their education to address their specific needs. That is not the case in all states. The proposed rule will help address some of the disadvantages, the first of which is the identification process. The process can be skewed to identify more advantaged students while missing less advantaged, twice exceptional, and/or bilingual students. These students may be the most in need of gifted services and support in order to reach their educational potential. Also, by expanding the scope of identification to less traditional academic areas, such as leadership, artistic ability, and academic aptitude beyond mathematics, reading, and writing, we will be allowed to identify and provide services for students who might represent the most creative problem-solvers and leaders, but who might not be identified when using the traditional academic focus only. The proposed GIEP will be a boon to identified students by aligning the paperwork with a gifted student's specific needs instead of using paperwork that is designed for students with disabilities and has always seemed to me to be a poor fit. Requiring the LEA to ensure that gifted programming is addressing student's needs by reporting that gifted students' growth is commensurate with their potential would represent a highly effective feedback loop. Finally, the requirement that schools report on the state of their gifted funding ensures that the funding is appropriately allocated to their program for which it was intended.

Thank you so much for considering my thoughts on this subject.

--

Wendy Dove

SA2GE (Services for Advanced Academics and Gifted Education) Teacher, NBCT-
Gifted and Talented
El Dorado Community School
505-467-4969 desk

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by the public.

From: [Jeri Lynn Salazar](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] In support of the new rule change for gifted education
Date: Friday, June 30, 2023 1:13:06 PM

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My name is Jeri Lyn Salazar and I am writing you in support of the new role change for gifted education.

I am the past president of the New Mexico Association for the gifted. I teach gifted education in Santa Fe, New Mexico.

I believe this bill will offer the supports needed for our gifted students and educators in New Mexico.

Services for gifted students are so incredibly important in order to provide them with the supports that they need to continue to learn new content and stay excited and interested in their learning.

Hello NMAG board members,

As I prepared my email with feedback on the proposed rule change for gifted education in New Mexico, it occurred to me that the notes I prepared might help others share their feedback.

Sorting through the details of a proposed rule change can be a daunting and time-consuming task. I hope this "Cliff Notes" version might help others share their feedback.

I selected four sections of the proposed rule change and will present them in an *"If you are concerned about then you may wish to express your support for {specific section of proposed rule change}."*

Feel free to share this with others who are invested in the gifted education of New Mexico students.

I hope this is a useful tool for those who want to provide feedback on the proposed rule change and are not sure where to start.

~Neily Snook

Please be aware that written comments must be received no later than 5 p.m. (MDT) on Thursday, July 6, 2023.

Send comments to: Rule.Feedback@ped.nm.gov

Here is the link to the entire proposed rule change for gifted education:

https://webnew.ped.state.nm.us/wp-content/uploads/2023/05/6.31.3-NMAC_PreApproved-for-Web_N-1.pdf

Funding:

Did you know NMPED provides approximately \$380 per gifted student, per year to NM school districts? Some of our NM school districts do a fantastic job of ensuring these funds support gifted programming; however, other NM school districts do not specifically allocate these funds to gifted programs.

If you would like to see all NM school districts held accountable for how gifted education funds are spent, For this reason I support of section 6.31.3.10.

"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."

Universal Screening:

Are concerned about the discrepancy across NM schools and districts regarding teachers' ability to identify and refer students for gifted screening?

For this reason I support universal screening in 6.31.3.11.B

"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."

Gifted Artistic and Leadership Abilities:

Are you in favor of NM students who are gifted in artistic or leadership abilities receiving gifted

For this reason I support of section the addition of artistic and leadership ability in 6.31.3.11.A

"6.31.3.11.A: 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."

Considering Culture, Language, and Socioeconomic Factors:

Are you concerned that certain groups of students appear to be missing from NM gifted education programs? (Including students of a specific culture, students who speak a language other than English, or students of a lower socioeconomic background)

For this reason I support of section 6.31.3.11.E

"6.31.3.11.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."

Sent from my iPhone

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From: [Amanda Seagers](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Gifted Rule Feedback
Date: Saturday, July 1, 2023 10:58:38 AM

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I am a teacher of the gifted and a concerned citizen of New Mexico and I oppose the proposed rule to change the standards to qualify for gifted. New Mexico's proposed policy of favoring certain racial groups when considering students for the gifted program is a violation of the principles enshrined in the 14th Amendment. This constitutional safeguard asserts that an individual's race should hold no sway over their treatment. The Constitution of the United States should be colorblind, and all citizens should have equal rights under the law.

Decreasing the rigor required to qualify for the gifted education program in New Mexico undermines the self-esteem and self-respect of the people it is supposedly helping.

I oppose the proposed rule to change the standards to qualify for gifted education in New Mexico.

Sincerely,
Amanda Seagers

From: [Jennifer Lopez](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Letter in support of proposed rule
Date: Monday, July 3, 2023 12:01:41 PM
Attachments: [Gifted Rules Change.pdf](#)

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Please see the attached letter I am providing in support of the proposed new rule for gifted education.

Jennifer Lopez
(she, her, hers)
SA2GE Teacher
(Services for Advanced Academics and Gifted Education)
EJ Martinez 467-3800
Nava 467-1200

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July 3rd, 2023

To Whom it May Concern:

This letter is written in support of the proposed new rule for gifted education. The positive attributes of this rule increase access and therefore creates equity that this realm desperately needs.

As the Yazzie decision highlighted, equity has been a lingering concern in education and the area of gifted education is not immune to this. The proposed rule addresses this and makes substantial steps to mitigating those concerns.

By providing access to universal screening, we can help close the gap of those students who have a high opportunity to learn and those that don't and we can catch twice exceptional students who may not be referred for testing otherwise. The money allocations proposed by the rule would better direct funding to aid in increasing the availability of gifted teachers, and the quality of their instructional materials. We would no longer be reliant on the budgetary constraints pressing on the needs of general education and forcing programs like gifted education to receive merely what is left and to make due. The programming component of the rule will also provide equity across the state and within districts as well. By creating a new gifted IEP (GIEP) we will be able to plan and document services in a way that addresses the unique needs and goals for those students who have a gifted IEP.

The proposed new rule will provide positive changes to gifted education in New Mexico. Additionally these positive changes will engender the equity desired by both policy makers and the educators that serve our students. I therefore urge you to support enacting this Proposed New Rule.

Jennifer Lopez
Gifted Education Teacher
Santa Fe, NM

From: [Cory Messenger](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Gifted Rule Change Support
Date: Tuesday, July 4, 2023 7:36:54 PM

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Dear Sir/Madam,

I am writing to voice my support of the proposed rule changes regarding gifted education in New Mexico.

In particular, there are two specific areas that are crucial to improving our services to gifted students.

First, the funding provided to gifted students is imperative to their growth. Unfortunately, not all school districts use the \$3800-per-student funds to serve the needs of the students for whom these funds are intended. If these funds are allocated to servicing gifted students, it is only ethical that we ensure districts are held accountable for using the funds appropriately.

Additionally, some students' giftedness may present itself in areas that are not currently recognized, such as artistic ability and leadership. This rule change helps to address this significant issue by ensuring that these students are identified and provided with services that will help their talents flourish.

Thank you for your time and consideration in this important matter.

Respectfully,
Cory Messenger

From: [Geoffrey Moon](#)
To: [FeedBack, Rule, PED](#)
Cc: [jpinkerton](#)
Subject: [EXTERNAL] Rule Feedback for NMAC 6.31.3 Proposed Changes
Date: Wednesday, July 5, 2023 2:05:09 PM

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My name is Geoffrey Moon. I am a gifted program specialist for Santa Fe Public Schools, former President of the New Mexico Association for the Gifted, and teacher of gifted education for more than 20 years. I was a recipient of the 2019 National Association for the Gifted Coordinator Award. I am parent to two twice-exceptional gifted children.

I write in support of the proposed rule change, because I believe it is an ethically and educationally appropriate implementation of NM Stat § 22-13-6 (2021) and NM Statute § 22-13-6.1 (2021) in the context of the 2020 Gifted Education Next Steps Focus Discussions Report, 2022 HM 33 report, the Yazzie/Martinez lawsuit, and 2023 SM 60.

Legal Requirements

NM Stat § 22-13-6 (2021)

1. defines a “gifted child” for the purposes of special education,
2. protects the right of school districts to offer special programming to those who do not meet criteria, and
3. reserves state funding for “department-approved gifted programs for those students who meet the established criteria.”

§ 22-13-6.1 (2021)

1. requires the state to “adopt standards pertaining to the determination of who is a gifted child”
2. vests district “multidisciplinary teams . . . with the authority to designate a child as gifted” who “shall consider diagnostic or other evidence of the child’s:”
 1. creativity or divergent-thinking ability;
 2. critical-thinking or problem-solving ability;
 3. intelligence; and
 4. achievement
3. requires multidisciplinary teams to consider the context of “child’s cultural and linguistic background and socioeconomic background” and “any disabling condition” “in the identification, referral and evaluation process”
4. and empowers “advisory committees of parents, community members, students and school staff members” to “review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery”

Assumptions arising from special education

A number of the terms in these statute are not internally defined, but refer to concepts in special education and elsewhere. In order for these laws to be enacted, there must be:

1. state funding
2. PED approval of gifted programs
3. standards for evaluation
4. multidisciplinary teams
5. identification, referral, and evaluation processes
6. and advisory committees with review power

The 2020 Next Step Focus Discussions found identification and programming were sometimes not occurring, were

happening inconsistently, or were happening inequitably.

Next Step and HM 33 Findings and Recommendations

The 2020 Next Step Focus Discussions generated findings around identification, program design and service delivery, and curriculum and instruction that suggested the NMAC needed updates which are included in the rule change. The HM 33 Report concurred, finding inequitable identification and outcomes, inconsistent identification and services, and recommending updates to “the NMAC to reflect current best practices.”

The Martinez/Yazzie finding of inequitable service for Hispanic, American Indian, EL and low-SES groups is aligned with and addressed by the rule change. The NM legislature expressed their desire to have these issues addressed in 2023 SM 60, stating “students identified in the Martinez/Yazzie v. State of New Mexico ruling be represented with greater equity and consistency as eligible for gifted education programs.”

Some of the Next Step findings and their match to rule changes are listed below

Next Step Finding	Next Step Recommendation	Addressed in updated rules
“Across schools and districts there is inconsistent, inequitable, and in some cases no identification”	“The focus groups suggest that systematic, equitable, universal screening tools to identify gifted students are needed in the state of New Mexico with guidance from the NMPED in collaboration with state gifted education leaders.”	√
	“Identification tools must use local norms to reduce inequitably, ultimately, and harmful practices.”	√
	“Collaboration with and oversight is needed from the NMPED.”	√
“Focus groups found that various practices are occurring throughout the state. Many systems in the state do not provide a continuum of services that address the interests, strengths, and needs of gifted students. . . Focus groups found that while educators may use a variety of service models, many are not aligned to K–12 standards for gifted students and do not enhance the students’ cognitive, psychosocial, and social-emotional abilities.”	“All gifted services and delivery models should follow the NMAG and NAGC standards.”	√
	“Dedicated funding and oversight for gifted programming needs and services.”	√
	“Use of research-based program/service model designs that produce advanced outcomes for gifted students K–12.”	√
“The curriculum, instructional strategies, and materials and resources must engage a variety of gifted learners using practices that are responsive to diversity. Based on the knowledge of the focus groups, few of the curriculum and instruction models used in New Mexico schools meet the NAGC standard”	“Accountability for program, curriculum, and instruction quality. “	√

Please adopt the proposed rules to alleviate the inequities identified in Martinez/Yazzie, using the recommendations consolidated in the PED Next Steps report and confirmed by the HM 33 Report and SM 60.

Geoffrey Moon (he/him)

SA²GE Services for Advanced Academics and Gifted Education

Santa Fe Public Schools

gmoon@sfps.k12.nm.us

(505) 467-2622

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From: [Angela Reynolds](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Proposed Rule Making for NMAC 6.31.3 "Gifted and Talented Students."
Date: Wednesday, July 5, 2023 3:44:48 PM
Attachments: [4B0858A4E6A44918B6AA5515D8645211\[7977611\].png](#)

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New Mexico Public Education Department;

The intent of this email is to express my support for the proposed rule change for 6.31.3 NMAC, Gifted and Talented Students. I support the rule change in its entirety, especially in light of the following points:

The proposed Gifted Funding Education Plan Reporting Requirements are essential for equal access and funding of gifted education across New Mexico. It is imperative that school districts are held accountable for the use of these funds for New Mexico gifted students.

It is incredibly obvious as a practitioner, parent, and community member that the composition of gifted students in school districts across New Mexico that specific cultural, linguistic, and socioeconomic groups are underrepresented. The Eligibility Determination proposed change will help to engage parents in the process and allow for a state level dispute resolution process.

School districts are currently relying on teacher recommendations for gifted screening. Many teachers are struggling to identify gifted students due to unconscious bias. Universal screening could help remedy this concern.

Lastly, Adding artistic and leadership ability to the list of areas of giftedness recognized in New Mexico public schools is a positive move toward acknowledging and celebrating the great diversity present in our state.

Thank you for your time and attention.

Angela L. Reynolds, MA, LED

Educational Diagnostician, Parent, Grandparent, and Community Member, Albuquerque Public Schools



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*News about COVID-19 (Coronavirus) may create anxiety and concerns. If you or a loved one is experiencing any kind of emotional crisis, mental health, or substance use concern, Counselors are there to hear you 24 hours a day, 7 days a week at the NM Crisis & Access Line. Call 855-662-7474 OR Call or text their Peer-to-Peer Warmline 1-855-466-7100 (call 3:30pm-11:30pm / text 6pm-11pm); and visit <https://www.nmcrisisline.com/> Also, AGORA Crisis Line: 866-HELP-1-NM OR Suicide Prevention Lifeline: 800-273 TALK

From: [Adrian Avila](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] 6.31.3 NMAC, Gifted and Talented Students
Date: Thursday, July 6, 2023 8:03:10 AM

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Dear members of the Policy and Legislative Affairs Division of the NM Public Education Department:

Thank you for the opportunity to provide public comment on NMAC 6.31.3 (Gifted & Talented Students). I am writing in my capacity as a private citizen and not as an employee of the NM Legislature. As such, all opinions reflect my personal beliefs and should **not** be construed as the position of anybody within the Legislative branch of government in any capacity.

I fully support the proposed rule change. The SEG has dedicated funds to provide these services to Gifted students and it is the responsibility of School Districts and Charter schools to utilize this funding for its intended purpose. Furthermore, this rule seeks to remedy the negligent and statistically impossible underidentification of our most vulnerable populations, including our linguistically, socioeconomically, disabled, and culturally diverse students. It is imperative that the PED move forward with this proposed rule change to ensure our students receive an equitable education.

Sincerely,

--

Adrian Avila

From: [Helen Stein](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] feedback on 6.31.3 NMAC, Gifted and Talented Students
Date: Thursday, July 6, 2023 8:30:39 AM

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Thank you for this opportunity to provide feedback on 6.31.3 NMAC, Gifted and Talented Students.

I am in full support of all sections of the proposed rule 6.31.3 NMAC, Gifted and Talented Students but will speak to sections; **6.31.3.11.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 and 6.31.3.11.B Gifted Artistic and Leadership Abilities: **6.31.3.11.A: 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.

As an educator since 1987, having specifically worked with gifted students at the elementary, middle school and high school levels for nine years in APS schools, I have seen students who did not qualify for the gifted program due to their inability to answer questions on a timed and biased test, sometimes by just a few points. Many more students living in the more affluent areas of Albuquerque score higher on the qualification tests than do students with less advantages. This is a clear problem and is directly connected to issues raised during the Yazzie/Martinez v. State of New Mexico case. We need to use multiple measures in order to address this inequity. A team of individuals at the local level who know the students can more fully see their potential in the areas of giftedness. For example, this year, I administered the timed CoGAT prescreener to a 4th grade student. His work in the regular education classroom in mathematics specifically was exemplary. His scores were higher than students who had been identified in the area of gifted mathematics. If he could not solve a problem in class, he brought it home of his own accord to work on it until he had solved it. He missed the required number of points on the timed

prescreener to go on to the full battery of tests for giftedness. He would have gotten enough points on the prescreener according to his grade level but not according to his age, which is the criteria APS uses. His birthday falls early in the year so he is one of the older students at his grade level. I requested that he be allowed to go on to the full battery of tests but he was denied the chance. Trained teachers of gifted students who are working with a local team can identify and meet the needs of students such as this one. His academic needs are not being met in the regular education classroom and his confidence in his own abilities was shaken due to not passing a test he was given 30 minutes to take on one day in fourth grade. I would next like to address the following section, **6.31.3.10**. Universal Screening: "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. I am in support of universal screening because it would ensure that all New Mexico students are afforded the same consideration. However, universal screening cannot be defined as taking one test. Multiple measures must still be a part of the process.

Sincerely,
Helen Stein,
Teacher of the Gifted, APS

--

Helen Stein, MA Ed, MSLIS
Teacher of Gifted Students
Lew Wallace Elementary School
Albuquerque Public Schools
NM Battle of the Books
Titles Selection Committee
Co-chairperson
(505) 401-6516

"Scientists have recently determined that it takes approximately 400 repetitions to create a new synapse in the brain- unless it is done with play, in which case, it takes between 10-20 repetitions."- Dr. Karyn Purvis

From: [Carmen Prelo](#)
To: [FeedBack, Rule, PED](#)
Cc: [Rosalinda Baeza](#); [Jennifer Staski](#)
Subject: [EXTERNAL] Gifted Rule Changes
Date: Thursday, July 6, 2023 9:55:47 AM

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Hello

I am in support of rule 6.31.31.A Artistic and leadership identification. My question is how are we going to Identify this? In the past we used a portfolio presentation and a committee who reviewed their information and made a decision.

In reference to 6.31.3.1A Culture And Language. What assessment tools will be used for this identification?

Thank you

Carmen Sandra Prelo
Gifted and Talented Coordinator
Mescalero Apache School
249 White Mountain Drive
Mescalero NM
575-464-4431

From: [Jaclyn Gerstein](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Feedback for the Title 6 Gifted and Talented Proposed New Rule
Date: Thursday, July 6, 2023 11:43:56 AM

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I have been teaching gifted education at Salazar Elementary, a PreK-6 Title 1 bilingual school in Santa Fe Public Schools, for six years. My primary objective is to enhance my students' education by providing them with knowledge, skills, and attitudes that will enable them to compete on an equal footing with more privileged students when they reach high school and enter the workforce. To achieve this goal, I believe the proposed new rule would help with this goal.

Identification and Evaluation of Gifted Students: At our school, the current method of identification relies primarily on testing, which puts many students from diverse backgrounds at a disadvantage. To address this issue, I support the inclusion of universal screening and alternative identification processes. These changes would help to mitigate the inherent disadvantages faced by racially and ethnically diverse students, economically diverse students, culturally diverse students, and students with limited English proficiency. In essence, this section of the new rule would promote equity in gifted education, not only within my district but across the state of New Mexico.

A specific G(gifted)IEP: Currently, we are required to complete annual Individualized Education Programs (IEPs) for our gifted students. However, the existing IEP format does not adequately meet the needs of gifted students, as evidenced by the fact that I often mark "does not apply" for three-quarters of the IEP. In this regard, the proposed new rule suggests replacing the IEP with a Gifted Individualized Education Program (GIEP) that aligns more closely with the unique needs of gifted students.

Please feel free to ask any questions or request additional information if needed.

Dr. Gerstein

--

photo



Dr. Jackie Gerstein, LPCC

Faculty: Walden and Antioch Universities; Teacher: Gifted Education at Santa Fe Public Schools

W <https://usergeneratededucation.wordpress.com/>

Portfolio <http://jackiegerstein.weebly.com/>

Maker education <http://www.makereducation.com/>



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From: [Rebecca Davis](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] 6.31.3 NMAC, Gifted and Talented Students
Date: Thursday, July 6, 2023 12:32:58 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Dear Members of the NM Public Education Department,

I am writing to express my full support of the proposed rule change for 6.31.3 NMAC, Gifted and Talented Students.

As was determined in the Yazzie/Martinez case, many marginalized and vulnerable groups of students in New Mexico are underserved. These groups include students needing Gifted services. The proposed rule change would move us toward addressing our current egregious failure to adequately identify and serve our diverse Gifted population. I have taught in the Gifted setting at a Title I school in Albuquerque for 20 years. During this time, I have witnessed firsthand the damage that current screening and qualification rules have done to our Gifted program. Our number of eligible Gifted students has dwindled to practically nothing, a statistical impossibility, while schools in more affluent areas are still somewhat maintaining their identified-as-Gifted population. The inequity among groups is astounding, and many of us have been sounding the alarm for years. We need to move away from the biased, single “gate keeper” model and incorporate multiple measures to determine Giftedness as is done in other states. It is my hope that this rule change will address equal access to Gifted education in New Mexico. It is imperative that every district is held accountable for equitable identification and support of all Gifted students.

I am asking that you please do right by our unidentified Gifted students of color, lower socioeconomic status, and those who are English Language Learners or twice-exceptional. This truly does matter and this rule change is desperately needed.

Thank you for the opportunity to comment.

Rebecca Davis
Teacher of The Gifted

From: [Bill Nichols](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] public comment in support of proposed rule 6.31.3
Date: Thursday, July 6, 2023 2:04:14 PM

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I write in enthusiastic support of the new proposed gifted education rule 6.31.3, which would explicitly safeguard the right of students of superior ability in New Mexico to an appropriate education, a right too often ignored despite the fact it is already guaranteed in state statute.

Please allow me to elaborate. I have some familiarity with this subject, as I have worked for fifteen years in New Mexico as a special education administrator, first in Gallup McKinley County Schools, and now in an Albuquerque Public Schools charter. While in Gallup, I helped respond to an Office of Civil Rights audit alleging lack of opportunity for Native American participation in honors, AP and gifted programming. At various points in my career I have served as a case manager for students identified as gifted, and I have facilitated scores of Individual Education Plan (IEP) meetings for students identified in this way.

Students who qualify as gifted in our state are entitled by law to an IEP, with all the same provisions extended to students with disabilities except for protection from certain discriminatory disciplinary practices. This has been the case for many years, and for good reason. A gifted eligibility evaluation documents a need, not an achievement.

Throughout my career, I have unfortunately met many children of superior ability whose educational needs were overlooked, or were at risk of being overlooked, because these children didn't "fit the mold" of their school's standard educational program. Families of students eligible for gifted services too often hear the message, implicit or explicit, that because their kids are "already doing fine," it is unimportant for them to demonstrate academic growth commensurate with their peers -- that, in effect, it doesn't matter whether their child learns anything in school. By any reasonable estimation, thousands of students of superior ability in our state routinely spend hours of each school day rote-practicing (or refusing to rote-practice) already-mastered skills. Many experience tediously excessive interludes of "free time," or are advised to stay home on "intervention days." Parents who legitimately inquire about subject or grade acceleration are likely to hear their child wouldn't be socially accepted among older learners, or that "Ms. X" would see it as a terrible shame to lose her favorite student.

Students who actually have the benefit of a gifted education program are the first to be impacted by staffing shortages, as teachers of gifted are the first ones reassigned in the event of a regular education vacancy. A recently hired teacher of gifted shared that in her previous assignment, despite holding a full-time gifted position, she was never in practice allowed to spend more than half her time with gifted students because of perennial re-assignments or "add-on" duties. Very few veteran teachers of gifted I know have not had the experience of being asked to disband their enrichment or acceleration groups and step into the shoes of an absent elementary or content area teacher.

All this speaks to the best-case scenario, in which the school actually has a gifted program. Many schools do not, even if there are students identified as needing one. Our state funding formula for years has included an increment for students with IEPs for gifted, equivalent to the increment for students with IEPs for disability. Districts must demonstrate through maintenance-of-effort that funding received for students with IEPs for disability reaches these students in the form of specialized programming, but there has never been any comparable accountability measure to ensure that gifted funding reaches gifted students. As a consequence, gifted staffing allocations are under constant threat of reduction because of the temptation to shift operational funds elsewhere; and because there is no reporting requirement associated with gifted funding, this is allowed to happen invisibly.

Finally, because this lack of accountability extends to gifted identification practices as well as gifted spending, we very likely have thousands of students of superior ability in New Mexico deserving of an IEP who don't have one. 6.31.2.12.C.2 NMAC stipulates that "If an accurate assessment of a child's ability may be affected by factors including cultural background, linguistic background, English language proficiency level, socioeconomic status, or disability condition(s), an alternative protocol as described in Paragraph (1) of Subsection E of 6.31.2.12 NMAC will be used in all school districts to determine the student's eligibility," but as I learned at a recent gifted identification training this past March, many New Mexico educators remain unaware of this requirement and continue to employ gifted identification methods that overlook important differences in socio-economic status, language and culture that are so characteristic of students in our state. At my current school, without the legally-required consideration of factors, the number of students identified would be half the required total.

This is a situation we need to think hard about as New Mexicans. By under-identifying and under-serving students in need of advanced learning opportunities, we are selling short our future as a state. We are depriving the persons most able to safeguard our futures of services that would help them do so -- educational services to which they are already legitimately entitled.

The proposed rule would clarify and enumerate our obligations to these children and provide the Public Education Department a means of monitoring and overseeing their progress.

Some of my fellow administrators may view the proposed rule as burdensome, but please understand these considerations should have been in place years ago, and none of the proposed new requirements is substantially different from what educators are already doing for students with IEPs for disability.

William Nichols
Director of Special Education
Native American Community Academy
1000 Indian School Rd. NW
Albuquerque NM, 87104
505-266-0992, ext. 1031

From: [MALCOLM SMITH CARLILE](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] New Gifted Ed Rule - 6.31.3.6 NMAC - N, 7/31/2023
Date: Thursday, July 6, 2023 2:18:02 PM

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I am writing in support of the proposed new rule for gifted education in New Mexico. As a teacher of gifted students I have had the privilege of observing the benefits of specialized gifted education services. Teachers have first hand knowledge of which curriculum and programs are effective and which are wasteful uses of precious resources. In my experience gifted programs provide a great return on investment. The students who qualify for gifted services have a real need to be challenged and have their talents nurtured, this can be incredibly difficult to do in the general education setting under even the most ideal circumstances. I have seen that when gifted students do receive high-quality specialized instruction it spurs them on to greater academic, career, and personal success, these accomplishments help students when it is time to give back to their communities. I am firmly in favor of regulating gifted education so that we can improve our practices. I am also enthusiastic about the parts of the proposed rule that would address inequality in identification of gifted students from traditionally marginalized communities; reducing socio-economic and racial disparity in education is a critically important time and endeavor. Thank you for your time and consideration.

Respectfully,

Malcolm Smith

--

Malcolm Smith-Carlile
Special Education Teacher
Santa Fe Public Schools

Santa Fe Public Schools does not discriminate on the basis of race, color, national origin, gender identity, sexual orientation, HIV status, marital status, pregnancy, sex, disability, or age in its programs and activities and provides equal access to the Boy Scouts and other designated youth groups. The following individuals have been designated to handle inquiries regarding the nondiscrimination policies for the district:

Title IX Coordinator- 2195 W. Zia Rd., Santa Fe, NM 87505, Tel. [505-467-3400](tel:505-467-3400)

Section 504 Coordinator- 1300 Camino Sierra Vista, Santa Fe, NM 87505 Tel. [505-467-2527](tel:505-467-2527)

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From: [Sascha Anderson](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] Gifted Education Rule Change
Date: Thursday, July 6, 2023 2:47:09 PM

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

To whom it may concern:

I am writing this letter in support of the new rule change, 6.31.3, for gifted education in the state of New Mexico.

Gifted education has long been fraught with issues of inequity, for myriad reasons. Martinez-Yazzie has given us an opportunity to tackle issues of equity across the board, including in gifted education.

As the parent of two Indigenous students identified as gifted, with gifted IEPs, I can attest that gifted students are not just high achieving students, but are atypical learners who require differentiated instruction and additional supports in learning. Further, we know that educational systems have not always done the best job identifying students in marginalized demographics as gifted, and that schools have not always had gifted programs that have reflected the diversity of their student bodies. The rule changes proposed for universal screening allow us the opportunity to close gaps and rectify shortcomings in the previous and existing systems, and to give all students, regardless of demographics, the opportunity to learn and grow.

Further, the funding focus in the new rule helps ensure that our gifted programs are fully resourced, so that the students identified through universal screening have access to the programs they need, rather than underfunded and under-resourced programs that do not meet the needs of students.

I appreciate the work that went into developing the rule changes, and hope that these will be adopted and implemented.

Best,

Sascha Anderson

Vice President, Santa Fe Public Schools Board of Education
Parent, two twice-exceptional children

Sascha Anderson

Pronouns: she/her/ella
917-399-6786

From: [Alethea Jahn](#)
To: [FeedBack, Rule, PED](#)
Subject: [EXTERNAL] 6.31.3 NMAC, Gifted and Talented Students
Date: Thursday, July 6, 2023 4:10:13 PM

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Dear Members of the NM Public Education Department,

I am writing to express my full support of the proposed rule change for 6.31.3 NMAC, Gifted and Talented Students.

As a Special Education Teacher with a Gifted Endorsement, I strongly support changes that encourage the identification of all students that are gifted including twice exceptional students.

As a community member, I have been troubled by the trend I have observed over a decade in education of identifying fewer and fewer gifted students.

As a parent, I am alarmed by the frequency that parents have to seek outside evaluations that identify a student as gifted after the district has determined the student did not qualify (because of the limited scope of district evaluation process).

The state is in sore need of a change to the gifted evaluation process to ensure that all students that are gifted are identified. It is my experience as an educator who frequently acts as the representative for the LEA that students who are from backgrounds of lower socioeconomic status or backgrounds of color are not identified as frequently as students who are from families that can afford to pay for outside evaluations in order to determine their gifted status.

Thank you,
Alethea Patterson-Jahn

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

Phone: (505) 256-3100 ext: 121

Fax: (505) 256-3184

Disability Rights New Mexico

3916 Juan Tabo Blvd., NE

Albuquerque, NM 87111

www.DRNM.org

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DISABILITY RIGHTS NEW MEXICO

3916 Juan Tabo Blvd., NE • Albuquerque, New Mexico 87111

TEL: (505) 256-3100 • FAX: (505) 256-3184

State-wide Toll Free 1-800-432-4682

WEBSITE: www.drn timer.org • EMAIL: info@drn timer.org

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