

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, 22-2-2.1, 22-2C-3, 22-2C-4, 22-5-13, 22-2-8.13, 22-13-1, 22-13-1.1, and 22-13-14 NMSA 1978.

Rule adoption date:

01/16/2025

Rule effective date:

01/28/2025

Reasons for adopting rule:

The proposed amendment would align the rule with legislation enacted during the 2024 legislative session, HB171, Graduation Requirements, and SB137, School Board Training, and revise provisions regarding special education modified diplomas. New proposed language to the amendment further clarifies school board training requirements and provisions regarding modified diplomas.

The proposed new rule does the following:

The proposed amendment 6.29.1 NMAC, General Provisions, updates procedural and governance requirements. The proposed amendment does the following:

- Updates statutory authority
- Updates and adds definitions
- Expands training requirements for school board and governing body members
- Updates provisions regarding assessment and demonstrations of competency
- Updates provisions regarding graduation requirements and diploma pathways

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. Changes between the published proposed rule and the adopted rule include adding statutory authority and clarifying language when a student's IEP must contain a proposed individual program of study. For more detail on the changes between the proposed rule and the rule as adopted, reasons for changes, and 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

Title:

Assistant Secretary

Signature: (BLACK ink only OR Digital Signature)

Date signed:

DocuSigned by:

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01/16/2025

Response to Public Comment
6.29.1 NMAC, General Provisions

• RULE CHANGES	
Section	Change
6.29.1.3 Statutory Authority	<ul style="list-style-type: none"> • Insert “22-2-8.13, 22-13-1”
6.29.1.9 NMAC Implementation	<ul style="list-style-type: none"> • Replace “and” with “which” in subparagraph (a) • Move existing language “Local school board members shall attend a department training course that explains department rules, policies and procedures, statutory powers and duties of local school boards, legal concepts pertaining to public schools, finance and budget and other matters deemed relevant by the department.” into subparagraph (a) of paragraph (3) of subsection A of 6.29.1.9 NMAC. • Move existing language “All local school board members shall receive training provided by the department, the New Mexico school boards association (NMSBA), or other department-approved providers which shall include a minimum of one hour of training during each term in office on equity and culturally and linguistically responsive practices” into subparagraph (b) • Move existing language “Elected or appointed school board members in their first term shall complete at least ten hours of mandatory training during their first year serving on the board. Training for new local school board members shall include: (i) at least two hours covering laws and department policies and procedures affecting local school boards or public schools, including ethics and school personnel; (ii) at least two hours covering public school finance, budgeting, and fiduciary responsibilities of local school boards; (iii) at least two hours covering legal concepts pertaining to local school boards and school districts, including the Open Meetings Act and the Inspection of Public Records Act; (iv) at least two hours covering effective governance practices and effective methods of supporting and supervising the local superintendent; and (v) at least two hours covering student achievement and student support services.” into subparagraph (c). • Move existing language “Mandatory training for all other local school board members shall include at least five hours per year and shall cover: (i) laws and department policies and procedures affecting local school boards or public schools, including ethics and school personnel; (ii) public school finance, budgeting, and fiduciary responsibilities of local school boards and performance-based budgeting; (iii) a local school board’s role in evaluating and improving student academic achievement and using data to set individual school goals for student academic achievement in each of the school district’s public schools; (iv) a local school board’s role in providing a safe learning environment conducive to improving student outcomes; (v) legal concepts pertaining to local school boards and school districts, including the Open Meetings Act and the Inspection of Public Records Act;” (vi) effective governance practices and effective methods of supporting and supervising the local superintendent; and (vii) other matters deemed relevant by the department.” into subparagraph (d). • Move existing language “to be credited with attendance at these courses, each attendee shall comply with written attendance procedures established by the department. Prior to <u>January 1</u> of each year, the NMSBA shall provide each local superintendent with a list of training hours earned annually by each local school board member. The school district's

Response to Public Comment
6.29.1 NMAC, General Provisions

	accountability report shall include the number of hours of training attended by local school board members and whether each member met statutory training requirements (see Subsection E of Section 22-2C-11 NMSA 1978);” into subparagraph (e).
Subparagraph (e) of paragraph (13) of subsection J of 6.29.1.9 NMAC Implementation	<ul style="list-style-type: none">• Replace “By the end of the eighth grade year” with “Not later than the first IEP to be in effect when a student turns 14, or younger, if determined appropriate by the IEP team”.

Response to Public Comment
6.29.1 NMAC, General Provisions

Public Comment Period: December 10, 2024-January 10, 2025

Comments	
Summary of Comments	PED Response
Comments Expressing Support	
Comment expressing strong support for the rule, particularly for updating the training requirements for local school board members and allowing the training to be provided by department-approved providers.	The department concurs.
Graduate Profiles and Next-Step Plans	
Comment includes suggestion to ensure graduate profiles are developed collaboratively with community input, and in particular to include language specifying that schools create graduate profiles through listening sessions with community members to align educational outcomes with local values, cultural practices, and aspirations for high school graduates.	While community engagement is vital in shaping educational practices, the proposed rule does not mandate a specific method, such as listening sessions, for developing graduate profiles. This flexibility allows schools and districts to determine the most effective ways to involve their communities, based on their unique contexts and resources.
Suggestion to clarify the definitions of “final next-step plan” and “interim next-step plan”.	The definitions align with statutory definitions found in 22-13-1.1 NMSA 1978.
Assessment	
Comment that Section 6.29.1.9(L) of the proposed rule refers to section 22-2-8.13 NMSA in support of the system of assessments. Suggestion that in order to clarify the statutory basis for the inclusion of grades K-2 in the system of assessments, the department should additionally consider referencing Section 22-13-1 NMSA.	22-13-1 NMSA 1978 has been added to the rule’s statutory authority section.
Comment includes suggestion to consider a definition of assessment to reflect local culture, values, and ways of knowing, following the removal of the demonstration of competency requirement in statute.	The proposed rule’s definition of assessment is intentionally expansive to provide flexibility for districts and schools to design assessment approaches that align with their local priorities.
Comment includes suggestion to provide clear language regarding "assessments" throughout the rule. Suggestion to amend references to "assessments" to explicitly exclude graduation or exit evaluations eliminated by HB171 to avoid confusion.	The proposed rule reflects the removal of graduation or exit evaluations. The term "assessments" is used intentionally to maintain flexibility and encompass a range of examinations.
School Board Member Training	

Response to Public Comment
6.29.1 NMAC, General Provisions

<p>Comment expressing concern that the proposed January 1 reporting date for school board member training information to be sent to the local superintendent does not account for winter break school closures and suggestion that February 1 is a more reasonable deadline.</p>	<p>Maintaining the January 1 deadline ensures timely accountability and aligns with other existing timelines.</p>
<p>Comment includes concern about the lack of uniform oversight and reporting requirements perpetuating inefficiencies and limiting the effectiveness of school board member training programs. Suggestion that the department should establish a consistent and transparent approval process, ensure all providers meet statutory standards, and apply uniform accountability and reporting measures.</p>	<p>The framework in the proposed rule allows providers to offer diverse and effective training options tailored to the needs of school board members. This approach supports a wide range of training opportunities while maintaining the integrity of the training program.</p>
<p>Comment includes concern that the department is not correctly interpreting the intent of SB137. Concern that the department’s approval process for school board member training providers lacks transparency, resulting in potential unequal treatment of training providers. Concern that certain providers are exempt from the rigorous approval processes applied to others, raising issues about equal protection and access to diverse and effective training options.</p>	<p>The proposed rule prioritizes quality and accessibility of training for school board and governing body members. The training process is designed to ensure efficiency and effectiveness. This approach ensures that all training meets the required statutory standards while maintaining flexibility to support diverse, high-quality training opportunities.</p>
<p>Comment including a suggestion to move language about local school board members into subsection A, rather than after the semi-colon at the beginning of subsection 9.</p>	<p>This language has been moved into subparagraph (a) of paragraph (3) of subsection A of 6.29.1.9 NMAC.</p>
<p>Comment including technical suggestion to change the placement of language regarding procedural requirements for local school boards under a new subsection.</p>	
<p>Suggestion to correct use of word “years” to “hours” in 6.29.1.9 A.(3)(c)</p>	<p>This phrasing was included under a previously noticed draft of the rule, and the current draft reflects a requirement of hours rather than years.</p>
<p>Suggestion to move and reword the statement requiring school board members attend a training on equity and culturally and linguistically responsive practices each term in office to language making the training mandatory each year. This would ensure that it aligns with reporting requirements for other training requirements for school board members in the rule, which are tracked on a yearly basis.</p>	<p>By maintaining the current requirement for training each term in office, the rule ensures that all members are equipped with this important knowledge while allowing flexibility to address other critical training needs within the reporting framework.</p>

Response to Public Comment
6.29.1 NMAC, General Provisions

Special Education	
<p>Comment includes suggestion to establish systems to monitor the impact of the rule changes on students with disabilities, including graduation rates, dropout rates, and post-secondary readiness. Suggestion that regular reporting and data collection occur to identify challenges and ensure timely intervention, with the flexibility to make further amendments at a later time.</p>	<p>Existing mechanisms for data collection and reporting provide the department with insights into student outcomes, which can inform necessary interventions and adjustments. Adding additional mandatory reporting requirements at this time could place an undue burden on districts and divert resources from direct student support. The department remains committed to evaluating the rule’s effectiveness through existing systems and making amendments if necessary to ensure positive outcomes for students with disabilities.</p>
<p>Comment includes suggestion to leverage the time until the phase out of the modified pathway to implement safeguards for students currently on alternate pathways, assess the long-term effects of the rule, and make necessary refinements to address identified gaps.</p>	<p>The proposed timeline within the rule provides a transition period to allow districts and schools to adapt and prepare for the changes. The department will continue to monitor the implementation process and is committed to addressing identified gaps through future guidance or amendments as necessary.</p>
<p>Comment includes concern that the proposed rule lacks accompanying data and analysis to evaluate its impact on students with disabilities, particularly regarding graduation rates and access to post-secondary opportunities. Suggestion that the department conduct a comprehensive study to assess outcomes and develop a well-informed strategy to mitigate potential adverse effects.</p>	<p>The department will utilize existing monitoring and reporting systems to assess the rule’s impact and identify potential areas for improvement over time.</p>
<p>Comment includes concern that the proposed elimination of the modified pathway and narrowing of the ability pathway will shift most students with disabilities onto the standard graduation pathway. Concern that the transition risks increasing dropout rates and disengagement among students who previously relied on alternate pathways to meet their educational needs.</p>	<p>The rule includes a phased implementation to allow districts and schools to adapt and provide appropriate supports for students during the transition. The proposed elimination of the modified pathway and the refinement of the ability pathway align with efforts to broaden access to the standard graduation pathway, which is designed to enhance post-secondary opportunities for all students.</p>

Response to Public Comment
6.29.1 NMAC, General Provisions

<p>Comment noting support for the elimination of the modified program of study, but concern about the implementation timeline. Reasons for requesting an extended implementation timeframe into the 2027-2028 school year include LEAs need to consider current middle school students who have transition plans aligned to the modified pathway. Note that LEAs will also require time to address gaps in course availability, staffing, and the implications for grading, GPA calculations, and class rankings to ensure equitable opportunities for students with disabilities while maintaining accurate reporting and meeting the criteria for a standard diploma.</p>	<p>The proposed timeline within the rule ensures consistency in the rollout of new graduation requirements across the state. Extending the implementation timeframe could delay the benefits of aligning students with the standard graduation pathway, including increased access to post-secondary opportunities. The phased approach incorporated into the rule will provide LEAs with time to address gaps in course availability, staffing, and other logistical considerations. The department will provide guidance and technical assistance to help LEAs navigate this transition effectively while ensuring equitable opportunities for all students.</p>
<p>Comment includes concern that insufficient training and technical assistance from the department could hinder the effective implementation of the rule. Suggestion that the department should provide comprehensive training and guidance to school boards, administrators, teachers, IEP teams, and families to ensure appropriate transition IEPs are implemented and to prevent decreased graduation rates for students with disabilities. Suggestion that the updated manual should provide clear standards, benchmarks, and strategies to support students with disabilities in obtaining standard or alternate diplomas.</p>	<p>The department will provide training and technical assistance to schools as part of this transition. Updated guidance materials will offer standards and strategies to help stakeholders support students with disabilities in achieving standard or alternate diplomas.</p>
<p>Comment includes suggestion to amend language regarding the transition age language. The current language references "the end of eighth grade" instead of including the operative age of 14.</p>	<p>The language in the proposed rule has been updated and is now inclusive of when a child turns 14 years old. Additionally, the provision around the eighth grade has been removed.</p>

Response to Public Comment
6.29.1 NMAC, General Provisions

<p>Comment includes concern regarding the elimination of the modified pathway. Stakeholders question whether the broadened graduation requirements for a standard diploma adequately address the unique needs of students with disabilities. Concerns include whether educators will receive sufficient training to support students transitioning from the modified pathway, the risk of increased dropout rates due to insufficient accommodations, and the potential decline in graduation rates for students with disabilities. Additionally, questions arise about how students currently assigned to or eligible for the Modified Pathway, particularly those who are currently in eighth grade, will be transitioned and how their right to a Free Appropriate Public Education (FAPE) until age 22 will be honored under the amended rule.</p>	<p>The transition period allows for all current high school students to remain on the modified program of study. Students may be transitioned from the ability program of study if they do not meet the current eligibility requirements. However, those students may still be placed on the modified program of study which will provide continued flexibility in their educational program and requirements to obtain a diploma.</p> <p>Students' right to FAPE is not altered by this rule, as students with disabilities were entitled to FAPE until they met the requirements for a diploma through the Standard Program of Study or they reached the age of 22.</p>
<p>Comment includes concern that with the elimination of the modified program of study and other changes within the rule, a wider gap will result between students with disabilities on the standard pathway and those who are not.</p>	<p>The phased implementation allows districts to adapt and provide individualized supports through IEPs to address the diverse needs of students with disabilities, helping to bridge potential gaps. Additionally, the broadened graduation requirements, which include options such as career and technical education and work-based learning, are designed to offer more inclusive and flexible pathways for students to succeed.</p>
<p>Comment including concern that the elimination of the modified pathway of study will cause an influx of students to be placed on the ability program of study, despite the rule's requirement that only the students with the most significant cognitive disabilities be placed on the ability program of study. Suggestion for increased department monitoring to assess this potential issue.</p>	<p>The proposed rule limits the ability program of study to students with the most significant cognitive disabilities to ensure appropriate placement. If necessary, additional guidance or corrective measures will be implemented to address emerging concerns, ensuring that the ability program of study is reserved for its intended population while maintaining equitable access to the standard pathway for other students.</p>
<p>Comment including request to expand the definition of the "most significant cognitive disabilities" to include criteria for what constitutes a student with the most significant cognitive disabilities.</p>	<p>The department currently has a definition for students with the most significant cognitive disabilities. This definition provides criteria for IEP teams to consider when determining placement on the ability program of study. The department continues to monitor the appropriateness of that definition.</p>

Response to Public Comment
6.29.1 NMAC, General Provisions

<p>Comment that language around the elimination of the modified program of study is not sufficiently explicit in the rule, and also that other sections that mention the modified program of study should be removed or amended.</p>	<p>The proposed rule specifies the phase-out of the modified program beginning with the 2025-2026 school year, and this language sufficiently communicates the intended change.</p>
<p>Comment including a suggestion to include language about necessary accommodations for students with disabilities within the definition of English language proficiency assessment.</p>	<p>Accommodations for students with disabilities are a critical component of equitable assessment practices. The proposed rule does not specifically address accommodations within the definition of English language proficiency assessments to maintain consistency with existing state and federal guidelines. Accommodations for assessments, including those for English language proficiency, are governed by broader policies that ensure compliance with the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act. These policies require that students with disabilities receive appropriate accommodations during all assessments, including English language proficiency assessments.</p>

Response to Public Comment
6.29.1 NMAC, General Provisions

Note: The comments below were submitted under a previous draft of the rule noticed on November 5, 2024.	
Summary of Comments	PED Response
Comment including support for language stipulating that the IEP team shall not change the program of study for a student entering the final year of high school from the standard program of study to the modified program of study, nor from the modified program of study to the ability program of study, after the 20 th school day of the final year of high school.	The department concurs.
Suggestion to add a definition for “assessment.”	The department concurs. A definition for “standards-based assessments” is included in the rule draft.
Suggestion to include language in the rule inclusive of schools that have moved to standards-based grading systems that do not align to the traditional GPA scale, rather than a standardized alphabetic grading system.	Including language regarding schools that have moved to standards-based grading systems may create confusion in ensuring consistency and comparability across requirements in the rule.
Comment that the rule draft indicates that students on the modified pathway must take the regular end-of-course exams, yet these students are not on the standard program of study.	The currently noticed draft of the rule updates this language and eliminates mentions of end-of-course exams.
Comment that the rule draft states that a modified program of study is not considered a regular high school diploma, but it doesn’t stipulate that it will be an alternate diploma.	The currently noticed draft of the rule clarifies requirements for the modified program of study. Diplomas obtained through the modified program of study do not meet the definition of regular high school diploma as previously described in the rule. Similarly, these diplomas do not meet the definition of state-defined alternate diploma and therefore cannot be considered as such.
Suggestion to add that, in addition to stipulating that by the end of the eighth grade each student’s IEP shall contain a proposed individual program of study for grades nine through 12, language should be added to include the end of the eighth grade or the year a child turns 14.	The language in the proposed rule has been updated and is now inclusive of when a child turns 14 years old. Additionally, the provision around the eighth grade has been removed.

Response to Public Comment
6.29.1 NMAC, General Provisions

Suggestion to expand the definition of free appropriate public education (FAPE) to include all students with disabilities, including students served under section 504 and Title II.

The definition of FAPE is currently determined by the Individuals with Disabilities Education Act (IDEA), which provides specialized services for students who meet specific eligibility criteria. While students who do not meet these definitions may not be included within the framework of FAPE, protections and accommodations continue to be available through Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.