

NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Education Department ("NMPED") hereby gives notice that it will conduct a public hearing in Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on May 1, 2012, from 9:30 a.m. to 11:30 a.m. The purpose of the public hearing will be to obtain input on the proposed amendment of rule 6.19.8 NMAC "Grading of Public Schools," which was adopted on December 15, 2011 and implemented the "A-B-C-D-F Schools Rating Act."

Interested individuals may either provide comments at the public hearing and/or submit written comments to Ms. Mary H. Deets, Administrative Assistant, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 ([MaryH.Deets@state.nm.us](mailto:MaryH.Deets@state.nm.us)) (505) 827-6641 fax (505) 827-6681. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) under the "Public Meetings and Hearings" link, or obtained from Ms. Deets at the email address or phone number indicated.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in either of these meetings are asked to contact Ms Deets as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

**TITLE 6            PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 19       PUBLIC SCHOOL ACCOUNTABILITY**  
**PART 8            GRADING OF PUBLIC SCHOOLS**

**6.19.8.1            ISSUING AGENCY:** Public Education Department  
[6.19.8.1 NMAC - N, 12-15-11]

**6.19.8.2            SCOPE:** This rule shall apply to all public schools in New Mexico.  
[6.19.8.2 NMAC - N, 12-15-11]

**6.19.8.3            STATUTORY AUTHORITY:** Sections 22-2-1, 22-2-2, and 22-2E-1 to 22-2E-4, being the A-B-C-D-F Schools Rating Act.  
[6.19.8.3 NMAC - N, 12-15-11]

**6.19.8.4            DURATION:** Permanent.  
[6.19.8.4 NMAC - N, 12-15-11]

**6.19.8.5            EFFECTIVE DATE:** December 15, 2011, unless a later date is cited at the end of a section.  
[6.19.8.5 NMAC - N, 12-15-11]

**6.19.8.6            OBJECTIVE:** The purpose of this rule is to implement the A-B-C-D-F Schools Rating Act and to establish a rating system for grading public schools in a way that the ratings are meaningful to parents, school personnel and the interested community. Additionally, this rule establishes criteria for rating public schools that includes charter schools and provides options for students in a failing school.  
[6.19.8.6 NMAC - N, 12-15-11; A, XX-XX-XX]

**6.19.8.7            DEFINITIONS:**

A. "ACT" means American college testing and is a standardized test offered by ACT, inc. for high school achievement and college admissions in the United States.

B. "Accuplacer" means a standardized test offered by the college board that provides information about academic skills in math, English and reading. The assessment is used for community college admissions and for placement in core college courses.

~~[B-]~~ C. "AP" means advanced placement which is a curriculum based program sponsored by the college board that offers standardized courses to high school students that are generally recognized to be equivalent to undergraduate courses in college and for which participating colleges may grant college credit to students who obtained high enough scores on the exams to qualify.

~~[C-]~~ D. "Career readiness" means organized programs offering a sequence of courses, including technical education and applied technology education, which are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring an industry-recognized credential, certificate or degree which can be applied towards their graduation from high school. To be considered successfully career ready, students must also graduate with a New Mexico diploma of excellence.

~~[D-]~~ E. "Cohort graduation rate" means the percentage of students who graduate high school in four years with a New Mexico diploma of excellence. The four-year cohort consists of all first-time ninth graders in the first year, joined by incoming tenth graders in the second year, eleventh graders in the third year, and twelfth graders in the fourth year. The members of the five-year cohort shall be followed by the PED for one additional year to form the five-year cohort graduation rate, and two additional years to form the six-year graduation rate. Students are excused from cohort membership if they transfer out, emigrate to another country, or die during that same period.

~~[E-]~~ F. "College readiness" means the readiness of New Mexico high school students for success in higher education based on their dual credit, ACT, PSAT, SAT, PLAN, accuplacer, international baccalaureate or IB, ~~[F-]~~ AP test scores, or other measurements approved by the PED.

~~[F-]~~ G. "Department" means the New Mexico public education department and is identified by the acronym, "PED".

~~[G-]~~ H. "Dual credit" means a program that allows high school students to enroll in college-level courses offered by a postsecondary institution that may be academic or career technical but not remedial or developmental, and simultaneously to earn credit toward high school graduation and a postsecondary degree or certificate.

I. “International baccalaureate” or “IB” means an educational foundation that requires the use of and monitors a standardized curriculum leading to internationally recognized certification.

~~[H.]~~ J. “Opportunity to learn survey” means a brief survey that asks students about their teacher’s predominant instructional practices in the classroom.

~~[I.]~~ K. “Performance level” means a level of performance as indicated by scale scores on the New Mexico standards-based assessment.

L. “PLAN” means a 10<sup>th</sup> grade assessment published by ACT that is designed to guide a student’s review of their progress towards college and career readiness.

~~[J.]~~ M. “Proficiency in reading and mathematics” means a student’s score of proficient or advanced on the New Mexico standards-based assessments.

~~[K.]~~ N. “PSAT” or “PSAT/NMSQT” means the preliminary SAT/national merit scholarship qualifying test which is a standardized test offered by the college board for both preliminary and primary selection to determine a student’s eligibility and qualification for the national merit scholarship program.

~~[L.]~~ O. “RtI [programs] framework” means a multi-tiered intervention model that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a framework for making educational programming and eligibility decisions. The model includes primary, secondary and tertiary levels of intervention based on progress monitoring to determine the student’s response or lack of response to the instruction/intervention.

~~[M.]~~ P. “SAT” means a standardized test offered by the college board for college admissions in the United States.

~~[N.]~~ Q. “School growth” means growth of a school performance over a three year period, as calculated by value added modeling (VAM).

~~[O.]~~ R. “School options” means a right to transfer to any public school not rated an F in the state or have children continue their schooling through distance learning offered through the statewide or a local cyber academy;

~~[P.]~~ S. “Secretary” means the secretary of public education of the PED.

~~[Q.]~~ T. “Standards-based assessments” means the collection of instruments that assess student academic performance and the students’ progress toward meeting the New Mexico content standards with benchmarks and performance standards, and are administered annually in grades three, four, five, six, seven, eight, ten and eleven.

~~[R.]~~ U. “Status” means a single year measurement of a school.

~~[S.]~~ V. “Student growth” means learning a year’s worth of knowledge in one year’s time, which is demonstrated by a student’s performance on New Mexico standards-based assessments that shows the student:

- (1) moving from one performance level to a higher performance level; or
- (2) maintaining a proficient or advanced proficient performance level; or
- (3) remaining in beginning step or nearing proficient performance level but improving a number of scale score points.

W. “Supplemental accountability model” or “SAM” refers to any schools that qualify for a modified accountability calculation. To be eligible as a SAM school, the school must serve a student population where 10% or more of the students are 19 years of age or older, or where 20% or more of the non-gifted students qualify for special educational services. Additionally the school, when established, must have the primary mission to address the needs of students who are at risk of educational failure as indicated by poor grades, truancy, disruptive behavior, eligibility for special education services, or other factors associated with temporary or permanent withdrawal from school.

~~[T.]~~ X. “VAM or “value added model” means estimating conditional school growth and conditional status, where “conditional” refers to taking student background characteristics into account.

[6.19.8.7 NMAC - N, 12-15-11; A, XX-XX-XX]

#### **6.19.8.8 REQUIREMENTS:**

A. The department shall grade all public schools annually by assigning a letter grade of either A, B, C, D or F to each school. Assessment results of all students, including students with a disability and students who are English language learners, shall be considered in assigning schools a letter grade.

B. Elementary and middle schools shall be graded based on:

- (1) student performance, including achievement on the New Mexico standards-based assessments;
- (2) student growth in achievement based on the New Mexico standards-based assessment;
- (3) student growth of the lowest twenty-fifth percentile of students in the public school based on the New Mexico standards-based assessments;
- (4) school growth based on the New Mexico standards-based assessments;

- (5) school attendance; and
- (6) the results of an opportunity to learn survey.
- C. High schools shall be graded based on:
  - (1) student performance, including achievement on the New Mexico standards-based assessments;
  - (2) student growth in achievement based on the New Mexico standards-based assessments;
  - (3) student growth of the lowest twenty-fifth percentile of students in the public school based on the New Mexico standards-based assessments;
  - (4) school growth based on the New Mexico standards-based assessments;
  - (5) 4-year and 5-year cohort graduation rate, and beginning with the 2012-2013 school year, a 6-year cohort graduation rate;
  - (6) school growth in the 4-year cohort graduation rate;
  - (7) college readiness (i.e., ACT, PSAT, dual credit, SAT, PLAN, accuplacer, international baccalaureate or IB, or AP scores) or career readiness (i.e., pre-apprenticeship programs, and cooperative education programs);
  - (8) school attendance; and
  - (9) the results of an opportunity to learn survey.
- D. The department shall annually publish disaggregated school grading data on its website.
- E. The parent of a student enrolled in a public school rated F for two of the last four school years shall have a right to either:
  - (1) transfer the student in the same grade to any public school in the state not rated F; or
  - (2) continue their schooling by means of distance learning through the statewide cyber academy or distance learning offered by any New Mexico school district or charter school, provided that the entire cost of distance learning shall be paid by the school that was rated F and in which student is still enrolled.
- F. The transfer of any student pursuant to the A-B-C-D-F Schools Rating Act shall be conducted pursuant to the open enrollment provisions of Section 22-1-4 NMSA 1978, provided that no school district or charter school shall adopt enrollment policies that exclude the enrollment of a student from a school rated F for two of the last four school years, and provided further that students seeking to enroll in a charter school must participate in that school's lottery unless the school has not exceeded its enrollment limit and in any event the enrollment procedures set forth in Section 22-8B-4.1 NMSA 1978 shall apply. A school district shall not be responsible for the transportation cost or transportation of a student who transfers to a charter school or to a school in another New Mexico school district. A school district shall, however, be responsible for the transportation and transportation cost of a student who transfers to another school within the [sehoel] same district even where that school is outside of the student's attendance zone.
- G. The options available pursuant to Subsection E of Section 6.19.8.8 NMAC, which shall be available to students with a disability and students who are English language learners, shall be in addition to any remedies provided for in the Assessment and Accountability Act (Chapter 22, Article 2C NMSA 1978) for students in schools in need of improvement or any other interventions prescribed by the federal No Child Left Behind Act of 2001.

[6.19.8.8 NMAC - N, 12-15-1, A, XX-XX-XX]

**6.19.8.9 DETERMINATION OF A SCHOOL'S GRADE:**

- A. For elementary and middle schools, the indicators shall be weighted by assigning up to a maximum of 100 points as follows:
  - (1) 40 points for student performance, including achievement on the New Mexico standards-based assessments of which 25 points shall be based on status proficiency and 15 points shall be based on VAM;
  - (2) 20 points for student growth based on the New Mexico standards-based assessments;
  - (3) 20 points for student growth of the lowest twenty-fifth percentile of students in the public school based on the New Mexico standards-based assessments;
  - (4) 10 points for school growth based on the New Mexico standards-based assessments;
  - (5) 5 points for school attendance;
  - (6) 5 points for results of an opportunity to learn survey; and
  - (7) in addition to the 100 points described above, an elementary or middle school may be assigned a total of five percent bonus points for either demonstrated parental involvement or demonstrated student participation in extracurricular activities, where:
    - (a) parental involvement shall include but not be limited to innovative school programs involving parental input, detailed parental surveys on key educational initiatives, successful school and parent

partnerships, increasing parental volunteerism, parental membership on audit committees pursuant to 22-8-12.3 NMSA 1978, and improvement of communication, all of which shall be verifiable;

(b) extracurricular activities shall include any single or combination of student participatory activities that include but are not limited to campus based academic and fine arts activities, campus based leadership activities, or any of the activities governed by the New Mexico activities association, all of which shall be verifiable.

B. For elementary and middle schools after totaling the points of each indicator, the following grade shall be assigned:

- (1) a grade of A indicates a score of 75.0 points or higher;
- (2) a grade of B indicates a score of 60.0 to less than 75.0 points;
- (3) a grade of C indicates a score of 50.0 to less than 60.0 points;
- (4) a grade of D indicates a score of 37.5 to less than 50.0 points; and
- (5) a grade of F indicates a score of less than 37.5 points.

C. For high schools, the indicators shall be weighted by assigning up to a maximum of 100 points as follows:

- (1) 30 points for student performance, including achievement on the New Mexico standards-based assessments of which 20 points shall be based on status proficiency and 10 points shall be based on VAM;
- (2) 10 points for student growth based on the New Mexico standards-based assessment;
- (3) 10 points for student growth of the lowest twenty-fifth percentile of students in the high school based on the New Mexico standards-based assessment;
- (4) 10 points for school growth based on the New Mexico standards-based assessment;
- (5) 8 points for the 4-year cohort graduation rate;
- (6) 5 points for school growth in the 4-year cohort graduation rate; however, schools that do not have members of any cohort are exempted from the graduation component of school grading for that year. The exempted school's overall grade will be comprised of the remaining grading components and its overall points will be adjusted to the standardized scale;
- (7) 4 points for the 5-year and 6-year graduation rates; however, schools that do not have members of any cohort are exempted from the graduation component of school grading for that year. The exempted school's overall grade will be comprised of the remaining grading components and its overall points will be adjusted to the standardized scale;
- (8) 5 points for student participation in college or career readiness;
- (9) 10 points for student success in college or career readiness;
- (10) 3 points for school attendance;
- (11) 5 points for the results of an opportunity to learn survey; and
- (12) In addition to the 100 points described above, a high school may be assigned a total of 5 bonus points for either demonstrated parental involvement or demonstrated student participation in extracurricular activities where:

(a) parental involvement shall include but not be limited to verifiable innovative school programs involving parental input, detailed parental surveys on key educational initiatives, successful school and parent partnerships, increasing parental volunteerism, parental membership on audit committees pursuant to 22-8-12.3 NMSA 1978, and improvement of communication, all of which shall be verifiable;

(b) extracurricular activities shall include any single or combination of verifiable student participatory activities that include but are not limited to campus based academic and fine arts activities, campus based leadership activities, or any of the activities governed by the New Mexico activities association.

D. A school will qualify as a supplemental accountability model or SAM when they serve a higher proportion of returning dropouts or students with disabilities. Utilizing modifications for graduation, career and college readiness, and bonus points, SAM schools must meet all other indicators for high schools, with the exception of these modified indicators:

- (1) graduation cohort assignments will be made at the time the student enters the SAM school, based on the student's grade at entry;
- (2) career and college readiness participation and success may be demonstrated by meeting benchmark scores on career readiness assessments approved by the PED; and
- (3) bonus points can include evidence that the school is meeting goals specialized for the non-traditional student population.

~~D.] E.~~ For high schools after totaling the percentage scores and corresponding points of each indicator, the following grade shall be assigned:

- (1) a grade of A indicates a score of 75.0 points or higher;

- (2) a grade of B indicates a score of 65.0 to less than 75.0 points;
- (3) a grade of C indicates a score of 50.0 to less than 65.0 points;
- (4) a grade of D indicates a score of 35.0 to less than 50.0 points; and
- (5) a grade of F indicates a score of less than 35.0 points.

F. To determine the participation rate, schools and districts must test 95% or more of students enrolled in tested grades, as well as 95% those students in the lowest quartile. In the event that either all students tested or those in the lowest quartile comprise fewer than 40 students, participation will be averaged across the current and prior two years for that group. A school or district's failure to meet 95% in either all students tested or in the lowest quartile will result in their overall grade being reduced by one letter grade.

[E-] G. Despite the grading of public schools as established by this rule, any school that meets adequate yearly progress pursuant to the federal No Child Left Behind Act of 2001 during the 2011-2012 school year shall not be assigned a grade lower than a C. This consideration shall not be available in subsequent school years.

[6.19.8.9 NMAC - N, 12-15-11, A, XX-XX-XX]

[The department maintains a school grading technical guide on its website, which can be accessed at <http://ped.state.nm.us/> and provides a description of the variables and formula used to determine school grading, as well as the assessments and measurements that can be used.]

#### 6.19.8.10 PRIORITIZATION OF SCHOOL RESOURCES:

A. As part of the annual budget approval process pursuant to Section 22-8-11 NMSA 1978, on or before July 1 of each year, the department shall ensure that a local school board or governing body of a charter school is prioritizing resources of a public school rated D or F toward proven programs and methods linked to improved student achievement until the public school earns a grade of C or better for two consecutive school years.

B. To determine the prioritization of resources of a public school rated D or F, the department shall examine any combination of:

- (1) a school's core curricula in reading and mathematics;
- (2) a school's intervention curricula in reading and mathematics;
- (3) a school's current professional development activities for licensed staff including any efforts or plans to align that professional development to the school's deficiencies in reading and mathematics;
- (4) a school's educational plan for student success;
- (5) the licensure and documented skill set of the school's teachers and administrators;
- (6) any short cycle assessments administered by the school in reading or mathematics;
- (7) any learning software used by the school to teach reading or mathematics;
- (8) any district or RED data related to student proficiency in reading or mathematics, high school graduation rates, advanced placement courses, growth in high school graduation rates, and ACT, PSAT, SAT, PLAN, accuplacer, international baccalaureate or IB, or AP scores; and
- (9) specific expenditures by the school related to teaching and assessing student proficiency in reading or mathematics; ~~[RtI programs]~~ intervention programs under the state's RtI framework; alignment of curriculum, instruction and professional development to common core; alignment to cultural based education principles; and parental involvement.

C. The department shall recommend additional proven programs and methods to local school boards and charter school governing bodies that are linked to improved student achievement. Each local school board and charter school governing body shall carefully consider the implementation of one or more recommended program or method until their failing school earns a grade of C or better for two consecutive school years. If after two consecutive school years a school continues to earn a grade of F, the local school board and charter school governing body shall implement new proven programs or methods that will result in increased student achievement.

D. A local school board or charter school governing body choosing not to implement PED recommended proven programs or methods must demonstrate with student achievement data and in writing to the department that they have already identified and implemented a proven program or method linked to improved student achievement in reading and mathematics.

[6.19.8.10 NMAC - N, 12-15-11, A, XX-XX-XX]

#### 6.19.8.11 SMALL SCHOOL AND NON-ASSESSMENT CONSIDERATIONS:

A. A small school is a school with ~~[an enrollment of]~~ fewer than ~~[25]~~ 30 students in the assessed grades. To calculate the school grade of a small school, the department shall where possible apply an alternate proficiency calculation. ~~[that accumulates student performance based on one or two immediately preceding years]~~

~~until a minimum group size is met. Once the minimum group size is met, the assessment data shall be used in grading that school.]~~

B. Schools such as kindergarten through grade two schools or ninth grade that are comprised of grades that are not included in the administration of standards-based assessments, shall be assigned the assessment data using a reconstituted student group of alumnae from that school in their first tested grade. If no alumnae exist, the school's feeder pattern will be used to assign a grade from the receiving school. If no feeder pattern exists, the school will be assigned the grade from the parent district.

[6.19.8.11 NMAC - N, 12-15-11, A, XX-XX-XX]

**HISTORY OF 6.19.8 NMAC: [Reserved]**

DRAFT 3-30-12 2:00 p.m.