

**TITLE 6            PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 30       EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS**  
**PART 11           ACADEMIC PROFICIENCY AND ATTENDANCE TIED TO INSTRUCTION PERMITS**

**6.30.11.1           ISSUING AGENCY:** Public Education Department  
[6.30.11 .1 NMAC – N, Y-YY-09]

**6.30.11.2           SCOPE:** This rule shall apply to all minors in the state seeking to apply for instruction permits from the motor vehicle division.  
[6.30.11 .2 NMAC - N, Y-YY-09]

**6.30.11.3           STATUTORY AUTHORITY:** Sections 22-2-1 and 22-2-2, NMSA 1978.  
[6.30.11 .3 NMAC - N, Y-YY-09]

**6.30.11.4           DURATION:** Permanent.  
[6.30.11 .4 NMAC - N, Y-YY-09]

**6.30.11.5           EFFECTIVE DATE:** Y-YY, 2009, unless a later date is cited at the end of a section.  
[6.30.11 .5 NMAC - N, Y-YY-09]

**6.30.11.6           OBJECTIVE:** The underlying objective of this rule is to motivate minors to attend school and succeed in their studies, regardless of whether they are enrolled in a public school, non-public school or home school, by establishing uniform requirements and procedures for determining whether they have demonstrated a certain level of academic proficiency or school attendance, the demonstration of which can be used in determining the issuance or rejection of an instruction permit by the motor vehicle division.  
[6.30.11 .6 NMAC - N, Y-YY-09]

**6.30.11.7           DEFINITIONS:**

- A.        “alternative test” means a test other than the New Mexico standards based assessment, that is administered in a non-public school or by a home school operator, or provided by the department;
- B.        “department” means the New Mexico public education department (“PED”);
- C.        “home school” means the operation by the parent or legal guardian of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science;
- D.        “motor vehicle division” means a division of the New Mexico taxation and revenue department (“MVD”) that is responsible for administering the New Mexico Motor Vehicle Code which includes the issuance of instruction permits and drivers’ licenses to those submitting an application;
- E.        “nearing academic proficiency” means attaining a minimum score in reading and mathematics during a student’s eighth grade as established by the laws, rules or procedures of the PED governing the New Mexico standards based assessment;
- F.        “New Mexico standards based assessment” (“SBA”) means a system for testing students in various grades for their proficiency in the subject areas of mathematics, reading and language arts, writing, science and social studies, pursuant to the Assessment and Accountability Act [22-2C-1 to 22-2C-11 NMSA 1978]. The SBA is administered annually to students in different grades in public schools and voluntarily to other students attending certain non-public schools and educational institutions in the state.
- G.        “non-public school” means a school, other than a home school, that offers on-site programs of instruction and is not under the control, supervision or management of a local school board or the department and includes schools operated by or under a grant or contract from the bureau of Indian education of the United States department of the interior;
- H.        “secretary” means the secretary of the public education department.

[6.30.11 .7 NMAC - N, Y-YY-09]

**6.30.11.8           GENERAL CONSIDERATIONS:**

- A.        This rule must be read in conjunction with Section 118 of 18.19.5 NMAC which was adopted by the tax and revenue department and requires minor applicants for an instruction permit to provide proof of identity,

completion of a driver education course, 90% school attendance in the ninth grade, and demonstrated achievement of nearing academic proficiency in the eighth grade in reading and mathematics.

B. Despite the effective date of this rule, it shall first apply only to those minors submitting applications to the MVD on or after September 1, 2011.

C. Alternative tests will be administered by the PED at least annually on dates and at locations established by the PED throughout the state.

D. Any minor, whether or not enrolled in a public school, who is in the eighth grade or is at least 13 years of age may take the alternative test.

E. A minor enrolled in a public school who is at least 13 years of age and has not for any reason demonstrated a “nearing academic proficiency” score in reading and mathematics during their eighth grade may take an alternative test.

F. A minor transferring from an out of state school may claim use of scores achieved in any eighth grade standards based assessment in reading and mathematics. School administrators shall verify that the student achieved a minimum score in reading and mathematics comparable to “nearing academic proficiency”.

G. A minor transferring from a department of defense operated school may claim use of scores achieved in any eighth grade academic standards based assessment in reading and mathematics. If no such assessment was taken, the minor may take the alternative test offered by the PED. School administrators shall verify that the student who took an eighth grade academic standards based assessment in reading and mathematics at a department of defense operated school achieved a minimum score in reading and mathematics comparable to “nearing academic proficiency”.

[6.30.11 .8 NMAC - N, Y-YY-09]

**6.30.11.9 DEMONSTRATING ACADEMIC PROFICIENCY:** In order to demonstrate academic proficiency that satisfies a condition for the issuance of an instruction permit:

A. A minor enrolled in a public school must take the New Mexico standards based assessment in the eighth grade and attain scores of “nearing academic proficiency” in both reading and mathematics.

B. A minor enrolled in a non-public school who has not taken the New Mexico standards based assessment in the eighth grade and attained scores of “nearing academic proficiency” in both reading and mathematics, may demonstrate academic proficiency by attaining a passing score in reading and mathematics as determined by the assessment used and administered by the non-public school in the eighth grade. A written certification from a non-public school of that minor having attained a passing score shall satisfy the requirement of demonstrating academic proficiency.

C. A minor attending a home school established pursuant to state law who has not taken the New Mexico standards based assessment in the eighth grade and attained scores of “nearing academic proficiency” in both reading and mathematics, may demonstrate academic proficiency by demonstrating grade-level proficiency in reading and mathematics as determined by the assessment used and administered by the home school operator. A written certification from a home school operator of that minor having attained a passing score shall satisfy the requirement of demonstrating academic proficiency.

[6.30.11 .9 NMAC - N, Y-YY-09]

**6.30.11.10 DEMONSTRATING 90% SCHOOL ATTENDANCE:** In order to demonstrate 90% school attendance that satisfies a condition for the issuance of an instruction permit:

A. Minors enrolled in a public school must obtain a certification of attaining 90% attendance in the ninth grade from the school in which they are enrolled.

B. Minors enrolled in a non-public school must obtain a certification from the school in which they are enrolled that they have met 90% attendance during their ninth grade at school.

C. Minors attending a home school established pursuant to state law must obtain a certification from their parent or guardian that they have met 90% attendance during their ninth grade in their home schooling.

[6.30.11 .10 NMAC - N, Y-YY-09]

**6.30.11.11 REVIEW OF ADVERSE DETERMINATIONS:**

A. Any person aggrieved by a written decision or determination made by the PED under this rule related to a PED-administered alternative test result, may, pursuant to the procedures set forth in this section, seek administrative review by the secretary or the secretary’s designee. Neither test results on an alternative test not administered by the PED nor denial of an MVD application for an instruction permit may be reviewed under this section.

B. A person aggrieved by the written decision or determination made by a public school under this rule to not-certify that the student has satisfied the ninth grade attendance or eighth grade reading and mathematics proficiency requirements, may, pursuant to the procedures set forth in this section, seek administrative review by the secretary or the secretary's designee.

C. All requests for review:

(1) shall be requested within fourteen (14) calendar days of issuance of a written decision or determination, signed by and contain the address and telephone number of the parent or legal guardian of the minor seeking review;

(2) shall describe in fewer than six (6) double-spaced pages why any decision or determination complained of was erroneous; and

(3) shall be accompanied by any supporting documents the requester believes will assist the secretary in rendering a final decision but in no event shall exceed a total of fifteen (15) pages of supporting documents.

D. The secretary or the secretary's designee shall:

(1) issue a written decision within thirty (30) calendar days of receiving a request unless, for good cause stated, the secretary or designee extends that period;

(2) after a review of the documents submitted by the students and their parents or legal guardians, determine if the decision or determination complained of was arbitrary, capricious, not supported by the facts or applicable law, or based upon fraud;

(3) rule on any requests to exceed the filing of the number of documents permitted or on filing a request for review late based upon good cause shown demonstrated by the parent or legal guardian seeking the exception; and

(4) not consider those documents submitted by the students and their parents or legal guardians that exceed the number of pages permitted.

E. A decision of the secretary or the secretary's designee issued under this section shall be final.

F. Any decision issued under this section that determines that a minor has satisfactorily demonstrated attendance or academic proficiency shall be notarized and issued in the form of a verified decision.

[6.30.11 .11 NMAC - N, Y-YY-09]

**HISTORY OF 6.30.11 NMAC: [Reserved]**