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Prepared By: John Sena, Deputy Director, LESC

Rulemaking Report: NMAC 6.10.5, School Instructional Time Requirements

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Agency: Public Education Department

Rulemaking Action: New Rule

Date Adopted: March 26, 2024

Effective Date: July 1, 2024

Summary

The New Mexico Public Education Department (PED) adopted a [new rule](#) requiring all public schools to have at least 180 instructional days per school year.

In addition to the 180-instructional-day minimum, school districts and charter schools must meet the following requirements:

- All students must be in school a minimum of 1,140 instructional hours.
- Instructional days must be a minimum of 5.5 hours and can be at maximum 7.5 hours. Half days must be at least 3.5 hours.
- Student lunch time shall be a minimum of 30 minutes. Lunch recess and passing periods to and from lunch do not qualify as instructional hours.
- Secondary students must attend a minimum of 3.5 instructional hours per instructional day, unless they provide evidence of participating for an equivalent amount of time in an apprenticeship, a work study program, a dual-credit program, in employment, in community service, or similar activities.
- Instructional hours or days lost to weather or other events must be made up in order to maintain compliance with minimum hour and instructional day requirements. The secretary may waive requirements due to hardship.
- Up to 60 instructional hours for elementary grades and up to 30 instructional hours for secondary grades may be used for professional work, but must be scheduled before, after, or on a day other than the required minimum 180 days.
- No more than four days can be remote instruction, and at least fifty percent of remote instruction must be synchronous.

While all schools are required to meet these requirements, the adopted rule exempts early college high schools and school districts and charter schools that meet “certain proficiency and growth targets in reading, language arts as determined by the secretary.”

The adopted rule makes no changes to proposed K-12 plus provisions, essentially mirroring statutory provisions governing the eligibility requirements and funding mechanisms of the law.

Substantive Issues

As noted in LESC analysis of the rule proposal, statute does not require a minimum of instructional days. Instead, Section 22-2-8.1 NMSA 1978 requires a minimum of 1,140 instructional hours. Additionally, statute also does not contain provisions for minimum or maximum length of school days.

The adopted rule removes any requirements for five-day school weeks, effectively allowing four-day school weeks. However, in order to maintain four-day weeks and comply with the 180-day requirement, schools would need to provide 45 weeks of school.

When it passed minimum instructional hour requirements, the Legislature specified up to 60 instructional hours for elementary school and up to 30 instructional hours in secondary schools could be used for professional work hours. While PED’s adopted rule allows for professional work hours to count toward the 1,140 instructional hour minimum, it requires those hours to take place “before, after, or on a day other than the required minimum 180 instructional days,” effectively running contrary to the intent that professional work be included in the instructional school day.

The table below compares other provisions of the PED’s proposed rule with those in the adopted version.

Proposed Rule	Adopted Rule
“Secondary school students must attend a minimum of four class periods for instructional day...”	“Secondary school students shall attend a minimum of three and one-half instructional hours per instructional day...”
“all public schools shall schedule more than fifty percent of school weeks as five-day school weeks;”	There are no provisions requiring five-day school weeks.
“all public schools shall be deemed to operate on five-day school weeks for the purposes of K-12 plus program funding calculations...”	There are no provisions requiring five-day weeks.

Other Significant Issues

The New Mexico School Superintendents Association, 53 school districts, and four charter schools filed a lawsuit requesting a temporary restraining order (TRO) to prevent the enforcement of the Public Education Department’s (PED’s) 180-day rule.

The lawsuit was filed in the 9th Judicial District Court in Curry County. The lawsuit cites case law stating “the court’s mandated task in construing statute is to search for and effectuate the intent of the Legislature,” then points to evidence of the legislative intent of the school calendar law to increase hours rather than days and honor embedded professional work time. The lawsuit also summarizes the harms plaintiffs allege they will incur as a result of the rule, including reallocation

of budgets to accommodate new days and insufficient transportation funding to accommodate new transportation requirements.

The court granted a temporary restraining order on May 3 before issuing a preliminary injunction May 13 prohibiting PED from enforcing the rule. In issuing his judgement, Judge Dustin Hunter said the new rule does not comply with current statute and cited the 2011 repeal of a law mandating 180 days as evidence of legislative intent. He also cited PED's lack of enforcement of an existing rule requiring 180 days.

Hunter also ordered PED to accept school district budgets that comply with current law, maintaining school districts' and charter schools' ability to plan their school years in instructional hours, rather than days. Parties in the case were scheduled to meet May 15 to discuss scheduling hearings in the civil case. It's unclear whether the case will be decided before a June 16 deadline for school district budget submissions or before July 1, which marks the beginning of the fiscal year and when school districts receive budget authority for the new school year.