

Public Education Department Rules Review

School Instructional Time Requirements: 6.10.5 NMAC

Summary

The Public Education Department (PED) proposed a [new rule](#) to align administrative code more closely to new learning time statutes. The proposed rule includes expanded definitions of instructional hours, instructional days, and school days, as well as more narrowly defining K-12 plus days. The proposed changes coincide with the proposed repeal of previous learning school calendar requirements, including those associated with K-5 plus and extended learning time programs.

In addition to including the statutory requirement of 1,140 instructional hours, the proposed rule requires all school to provide a minimum of 180 instructional days and requires secondary students to attend a minimum of four class periods per instructional day. The proposal sets a minimum of five and a half instructional hours and a maximum of seven and a half instructional hours for an instructional day, exclusive of recess, passing periods, and a minimum 30-minute lunch period.

The proposal includes statutory provisions for professional work time, including 60 hours for primary grades and 30 hours for secondary grades, but restricts those hours to “before, after, or on a day other than the required minimum 180 instructional days.” Professional work hours could not be counted toward instructional hours.

In order to be eligible for K-12 plus funding under the new proposal, a school district or charter school would have to operate on a five-day school week calendar and offer between 181 and 205 instructional days.

Substantive Issues

While PED has broad authority to promulgate administrative code, some of the provisions of the new rule appear to be directly or indirectly in contradiction to statutory learning time provisions and legislative intent.

Required Instructional Days. Statute does not currently contain any requirements or limits on a minimum number of instructional days. Past legislative attempts to mandate a certain number of days have faced pushback or have been repealed because of budgetary concerns. In passing recent learning time legislation, the

body signaled its intent to provide school districts and charter schools flexibility in school programming while still adhering to instructional hour minimums.

Additionally, the proposed rule requires all public schools to schedule at least 50 percent of school weeks as five-day weeks, effectively eliminating four-day weeks. While the Legislature has consistently approved budgetary language limiting the expansion of schools operating four-day weeks, school districts and charter schools already operating four-day weeks have been allowed to continue the practice.

K-12 plus days. The Legislature created the K-12 plus program during the 2023 legislative session. The statute provides thresholds for instructional days above which school districts and charter schools are eligible for additional funding. The law specifically calls out thresholds for four-day school weeks, signaling intent that there is no requirement for a five-day week to be eligible for funding, as long as school districts and charter schools are meeting statutory instructional hour requirements. The department's proposal that requires a minimum of 180 days to be eligible for funding appears contradictory to statutory provisions and legislative intent.

Secondary class periods. While New Mexico clearly outlines the number and types of courses secondary students must complete to graduate, there are no requirements about the way students meet those requirements. Because of that flexibility, secondary schools employ a variety of schedules, ranging from six- or seven-period days, to block or hybrid block schedules in which students attend four or five periods per day. PED's proposal would require secondary students to attend a minimum of four class periods per instructional day, unless a secondary student provides evidence of participating for an equivalent amount of time in an apprenticeship, work study program, or employment. The requirement exists regardless of a school's schedule or the number of credits a student is lacking for graduation.

Accreditation Procedures: 6.19.4 NMAC

Summary

PED proposed a [new rule](#) outlining annual accreditation requirements for school districts and charter schools, and the education programs of state institutions, Bureau of Indian Education (BIE) schools, and private schools. It also includes potential consequences if a school district or charter school fails to earn accreditation. The proposal accompanies the proposed repeal of 6.81.2 NMAC, Requirements for Nonpublic Schools and for Public Education Department Accreditation.

In broad terms, the department's accreditation proposal consolidates many statutory and regulatory requirements into one process by which the department uses its statutory authority to review whether school districts and charter schools meet those requirements and grant accreditation accordingly. Additionally, though, the proposed rule also directs school districts and charter schools to budget at least as much money on specific programs – those aimed at special education,

gifted education, and at-risk services – as is generated by corresponding units in the funding formula. As with the department’s proposed instructional time, this proposal appears contradictory to current statute, which specifically designates funds generated by the Public School Finance Act as “discretionary” to school boards and governing bodies of charter schools.

Substantive Issues

Public school reporting. School districts and charter schools already are required either by statute or regulation to submit a number of reports through various mechanisms. The proposed rule appears to reaffirm those requirements, stating, “school districts, charter schools, and state institutions shall provide reports to the department, either via the statewide data reporting system or by another method described by the department.” The proposal specifically calls out the following:

- 1) Board training,
- 2) Financial audit,
- 3) Program plans, budget and actual expenditure,
- 4) School enrollment,
- 5) School accountability data,
- 6) Attendance improvement,
- 7) School safety plan,
- 8) Postsecondary plans,
- 9) Class loads, caseloads, and subjects of instruction, and
- 10) Tribal consultation, tribal education status reports, student needs assessments.

Each of these are provided for in existing statute or regulation, and the proposal cites those provisions as rational for requirements.

Accreditation of nonpublic and BIE Schools. The new proposal largely maintains requirements for nonpublic and BIE schools to be accredited by an entity approved by the department. Unlike the previous rule, the current proposal does not specify approved accrediting agencies, but instead asks for an annual report that includes a number of requirements including the following:

- 1) The current accreditation status and schedule of reaccreditation by a department-approved accrediting entity,
- 2) A report of immunization status records,
- 3) A report of the completion of required emergency drills,
- 4) A report of attendance,
- 5) The school’s current attendance policy, and
- 6) For high schools, current graduation requirements that comply with state graduation requirements.

Accreditation of nonpublic and BIE schools would be based on the completeness and sufficiency of the annual report.

Annual accreditation cycle. Under the proposed rule, school districts, charter schools, state institutions, and nonpublic and BIE schools seeking accreditation would be required to submit all required reports before the end of each fiscal year.

The secretary would determine the accreditation status of those schools, which would remain in effect until the next accreditation determination, which presumably would happen the following fiscal year.

Consequences of public school disapproval accreditation status. The proposal specifies that a local school district or public school that is not accredited by the department would be ineligible to operate a school based-early childhood program, which is also a current statutory requirement. Further, though, the department could choose to take additional action, including the following;

- 1) Requiring a locally developed plan to correct the organizational or programmatic deficiencies contributing to disapproval,
- 2) Directing the organizational and educational planning of the local school district or public school,
- 3) Suspending from authority and responsibility the school board, superintendent, or school principal,
- 4) Notifying a charter school's authorizer for the purpose of suspension, revocation, or nonrenewal of the school's charter,
- 5) Bringing action in district court for the order of consolidation of school districts,
- 6) Closing the school, or
- 7) Executing other remedies in the public school code that may be appropriate.

All of the above actions could be taken, but none are required by the proposed rule.

Other Significant Issues

Public School Governance and Accountability. LESC has examined both school governance structures and gaps that exist in ensuring governing entities, from the Legislature to local school boards, are equipped to improve school performance. School board member training, for example, is one area LESC staff has pointed out for improvement. LESC staff has also presented on the need to consolidate and coordinate existing systems to ensure a comprehensive and connected system of accountability. And findings from the *Martinez/Yazzie* consolidated lawsuit clearly indicate a need for increased oversight and accountability on the part of the department.

While PED's proposed rule attempts to strengthen governance and accountability structures, because it relies on existing statutes and practices, it is unclear whether the rule would result in meaningful change. The proposal does not indicate whether strengthened requirements would be coupled with streamlined practices within the department or with improved data systems that would allow for more timely analysis and feedback of school district and charter school planning and implementation.

Lastly, PED and stakeholders have described consistent shortfalls in department capacity. Without additional personnel, it's unclear whether the department has the staff to adequately provide review and feedback required in the proposed accreditation process, especially considering the annual process described in the rule.

