

# 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, 12-6-1, et seq., 22-1-11, 22-2-1, 22-2-2.1, 22-2-2, 22-2-8.1, 22-2-14, 22-4-3, 22-5-4.13, 22-5-13, 22-8-6, 22-8-11, 22-8-13, 22-8-13.1, 22-8B-5, 22-8B-12.2, 22-8-19, 22-13-1, 22-13-14, 22-23A-7, and 24-5-4 NMSA 1978, and Section 1111(c)(4)(E) of the federal Every Student Succeeds Act.

#### Rule adoption date:

February 29, 2024

#### Rule effective date:

July 1, 2024

#### Reasons for adopting rule:

The purpose of the proposed new rule 6.19.4 NMAC, Accreditation Procedures, is to establish procedures for the PED accreditation of schools, including private schools and BIE schools seeking state accreditation, and to effect requirements for reporting to PED by private schools and BIE schools not seeking state accreditation.

The proposed new rule 6.19.4 NMAC, Accreditation Procedures, creates and outlines for all schools within its scope the annual accreditation review requirements, details of the annual accreditation cycle, procedures for administrative appeal, consequences of failure to submit required reports to PED, and consequences of receiving disapproval accreditation status. This rule includes procedures for PED approval of accrediting entities.

#### The Proposed new rule does the following:

- lists the required accreditation review requirements for local school districts, charter schools, and state institutions;
- lists the required accreditation review requirements for nonpublic schools choosing to seek state accreditation and BIE schools choosing to seek state accreditation;
- notes that all nonpublic schools and BIE schools, whether choosing to seek state accreditation or not, must submit an annual report to ensure the health and safety of New Mexico children;
- notes that school districts, charter schools, state institutions, and those nonpublic schools choosing to seek state accreditation and BIE schools choosing to seek state accreditation shall submit required reports for accreditation to the secretary of education by the end of the fiscal year;
- provides procedures for an administrative appeal hearing; and
- notes potential consequences for the disapproval of public school accreditation status.

#### 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 providing clarity on the process for nonpublic and BIE schools choosing to seek state accreditation. 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 "6.19.4 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

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Title:

Assistant Secretary

Signature: (BLACK ink only OR Digital Signature)

Date signed:

DocuSigned by:



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02/29/2024

**Response to Public Comment**  
**6.19.4 NMAC, Accreditation Procedures**

<b>RULE CHANGES</b>	
<b>Section</b>	<b>Change</b>
<b>6.19.4.6 Objective</b>	<ul style="list-style-type: none"> <li>• Insert “choosing to seek state accreditation” after “accreditation of private schools”.</li> <li>• Replace “seeking” with “choosing to seek” after “BIE schools”.</li> <li>• Insert “not choosing to seek state accreditation” after “reporting to the department by private schools”.</li> <li>• Replace “not seeking” with “not choosing to seek” after BIE schools.</li> </ul>
<b>6.19.4.7 Definitions</b>	<ul style="list-style-type: none"> <li>• Subsection A: Insert “that are not locally chartered charter schools” after “Public schools”.</li> <li>• Delete definition of “Digital citizenship” and renumber subsequent sections.</li> <li>• Subsection D: Insert “and includes those that are tribally controlled” at the end of the definition of BIE schools.</li> <li>• Subsection E: Replace “amount” with “number”</li> </ul>
<b>6.19.4.8 Public School Annual Accreditation Review</b>	<ul style="list-style-type: none"> <li>• Replace “contingent” with “based.”</li> <li>• Paragraph (3) of Subsection A: Add relevant statutory and regulatory citation, including the following: <ul style="list-style-type: none"> <li>○ Paragraph (a): Insert “pursuant to Section 22-8-6 NMSA 1978 and 6.29.1 NMAC”.</li> <li>○ Paragraph (b): Insert “pursuant to Sections 22-8-10 and 22-8-11 NMSA 1978”.</li> <li>○ Paragraph (c): Insert “pursuant to Paragraph 2 of Subsection B of Section 22-8-11 NMSA 1978”.</li> <li>○ Paragraph (d): Insert “pursuant to Paragraph 2 of Subsection B of Section 22-8-11 NMSA 1978”.</li> <li>○ Paragraph (e): Insert “pursuant to Subsection F of Section 22-2C-11 NMSA 1978”.</li> </ul> </li> <li>• Paragraph (4) of Subsection A: Replace “reports of student membership” with “data”.</li> <li>• Paragraph (5) of Subsection A: Delete “For student assessment data, a minimum ninety-five-percent participation rate is required by Section 1111(c)(4)(E) of the federal Every Student Succeeds Act.”</li> <li>• Paragraph (6) of Subsection A: Insert after “improvement plans” “submitted to the department no later than 45 days after the beginning of the school year” and delete “(attendance for success act) submitted to the department no later than 45 days after the beginning of the school year.” And insert “o the attendance for success act.”</li> <li>• Paragraph (7) of Subsection A: Delete “approvable”</li> <li>• Subparagraph (b) of Paragraph (9) of Subsection A: Replace “Subsection J” with “Subsection I”</li> </ul>
<b>6.19.4.9 Accreditation of Nonpublic and BIE Schools</b>	<ul style="list-style-type: none"> <li>• Subsection A: Insert “schools choosing to seek state accreditation” after “nonpublic” and “seeking state accreditation” after “BIE schools”.</li> <li>• Paragraph (1) of Subsection B: Insert “if applicable” after “approved accrediting entity”.</li> <li>• Delete Paragraph (6) of Subsection B.</li> <li>• Subsection B: Replace “seeking” with “choosing to seek” and replace “not seeking” with “not choosing to seek”.</li> <li>• Subsection B: Insert “to ensure the health and safety of New Mexico children” after “Annual report”.</li> <li>• Delete Paragraph (6) of Subsection B.</li> <li>• Subsection D: Replace “shall have the authority to” with “may”</li> </ul>

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	<ul style="list-style-type: none"> <li>• Subsection C: insert “schools choosing to seek state accreditation” after “nonpublic” and replace “seeking” with “choosing to seek” after “BIE schools”.</li> <li>• Subsection D: insert “school choosing to seek state accreditation” after “nonpublic” and insert “choosing to seek state accreditation” after “BIE school”.</li> </ul>
<b>6.19.4.10 Annual Accreditation Cycle</b>	<ul style="list-style-type: none"> <li>• Insert “choosing to seek state accreditation” after “nonpublic schools”.</li> <li>• Insert “state” after “BIE schools seeking”.</li> <li>• Delete “by the state” before “shall submit”.</li> <li>• Replace “seeking” with “choosing to seek” after “BIE schools”.</li> </ul>
<b>6.19.4.11 Administrative appeal hearing procedures.</b>	<ul style="list-style-type: none"> <li>• Replace “school district or charter school” with “school district, charter school, nonpublic school, or BIE school”.</li> <li>• Subsections A-J. Replace “local school board or charter school governing body” with “local school board, charter school governing body, or governing body of a nonpublic or BIE school” in 7 places.</li> <li>• Subsection M: Replace “private” with “BIE” after “nonpublic or”.</li> <li>• Subsection O: After “this rule” insert “and shall be included in the administrative record.”</li> </ul>
<b>6.19.4.12 Consequences of Public School Disapproval Accreditation Status</b>	<ul style="list-style-type: none"> <li>• Section B: Replace “public school” with “a local school district’s school”.</li> <li>• Paragraph (2) of Subsection B: replace “public school” with “a local school district’s school.”</li> <li>• Delete Paragraph (4).</li> <li>• Paragraph (5) of Subsection B: Renumber as Paragraph (4) and delete “the department may.”</li> <li>• Paragraph (6) of Subsection B: Renumber as Paragraph (5) and after “close the” insert “local school district’s”</li> <li>• Renumber Paragraph (7) as Paragraph (6)</li> <li>• Insert Section C:  “C. In addition to conferring disapproval accreditation status upon a state-chartered or locally chartered school, the department may: <ul style="list-style-type: none"> <li>(1) suspend the principal from authority or responsibility pursuant to Section 22-2-14 NMSA 1978;</li> <li>(2) notify a charter school’s authorizer for purposes of the suspension, revocation, or non-renewal of the charter of a state-chartered or locally chartered school by the authorizer, as provided for in Paragraph (5) of Subsection K of Section 22-8B-12 NMSA 1978;</li> </ul> or <ul style="list-style-type: none"> <li>(3) execute other remedies in the public school code that may be appropriate.</li> </ul> </li> </ul>

**Response to Public Comment**  
**6.19.4 NMAC, Accreditation Procedures**

**Public Comment Period:** November 7 – December 18

The New Mexico Public Education Department (PED) received \_\_\_\_ public comments for 6.19.4 NMAC, Accreditation Procedures. All substantive comments have been summarized below. Comments that are not substantive in nature or fall outside the scope of the rule have not been included.

Support for the proposed rule	
Summary of Comments	PED Response
Support for overall efforts to create stronger system of accountability to ensure public schools are providing adequate education.	The department concurs.
Support for requiring LEAs to submit clear reports of operating budgets and actual expenses along with other statutorily required reporting.	The department concurs.
Support for requiring LEAs to connect funding intended for students who are at-risk, have disabilities, and other factors that generate program units, believing that this has the potential to better ensure dollars are targeted to meet the needs of students facing the greatest barriers to success.	The department concurs.

**Response to Public Comment**  
**6.19.4 NMAC, Accreditation Procedures**

<b>Concerns about state accreditation of nonpublic and BIE schools</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Public comment included concern that nonpublic and BIE schools would be required to seek state accreditation in the rule as interpreted.	The language in several sections referring to accreditation of nonpublic and BIE schools could more clearly communicate that state accreditation is not required for these educational programs. The proposed rule does not require nonpublic and BIE schools to seek state accreditation. This will be made clearer with changes to the final rule.
Public comment included concern about unnecessary and burdensome reporting requirements for BIE and nonpublic schools.	<p>The statutory requirement for nonpublic and BIE schools to submit several annual reports places an obligation upon the agency to enforce the law and collect these reports. Including these reports in this rule reinforces understanding of and facilitate awareness of the statutory requirements.</p> <p>The statutory authority for required reports may be emphasized in changes to the proposed rule. The primary purpose of these laws and requirements to ensure the health and safety of all New Mexico children, could be clarified with changes to the proposed rule.</p>
Public comment included concern that the proposed rule would change the current system of accreditation for nonpublic and BIE schools which may choose to be accredited but are not required to be accredited.	The department intends not to change the current system of accreditation requirements for nonpublic and BIE schools and concurs that autonomous nonpublic and BIE schools should not be required to be accredited by an approved accrediting entity unless also seeking state accreditation. The final rule will be changed to allow nonpublic and BIE schools to continue if desired without accreditation by a department-approved accrediting entity.
Public comment included concern about the PED's authority to observe nonpublic and BIE schools.	The department intends not to change the current system of requirements for nonpublic and BIE schools and concurs that only those seeking accreditation by the state should be subject to observation of their operations by the PED, and will make the necessary changes to the proposed rule to clarify.
Public comment included concern about possible influence of the department on the curriculum of independent, nonpublic and BIE schools	Nonpublic and BIE schools should not be limited by state requirements for curriculum, with the exception that those seeking state accreditation shall have high school graduation requirements that substantially comply with state graduation requirements, pursuant to Section 22-13-1.1, NMSA 1978.
Suggestion that BIE schools should be included in Section 11, Administrative Appeal Hearing Procedures,	Although BIE schools and nonpublic schools are not required to be accredited by the state, changes will be made to the final rule include them in the appeals process in the event that state accreditation is desired but accreditation disapproved.
Concern that the list of approved accrediting agencies would be removed from rule with the repeal of 6.81.2 NMAC and new rule 6.19.4 NMAC	The department sees no need to codify the list of approved accrediting entities in rule. Listing approved entities in department guidance suffices.

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<b>Concerns about the role of the department in accreditation.</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Public comment included concern about the capacity of the department to conduct annual accreditation procedures as proposed in the new rule, including concern about obstacles to the procedure such as turnover of department staff, lack of expertise of those making accreditation judgments, lack of track record of the state for student performance, the transparency of the judgments made about accreditation status, the speed of implementation, and the ultimate authority of one person, the Secretary of Education, to make accreditation decisions.	<p>The proposed procedure for accreditation primarily involves verification of submitted reports to determine educational program compliance with statutory requirements at the school and district level. For this the department does have capacity, to the extent that report submissions required in the rule are part of each educational program's current legal obligation and such report submissions are already being collected by bureaus and divisions within the department.</p> <p>The proposed accreditation procedure relies largely on the objective evaluative judgement of bureau or division staff who collect and verify reports as evidence of legal compliance. Their role evaluating and approving components of educational programs would not change with the proposed rule. The proposed rule involves existing staff with the proposed, new accreditation procedures.</p> <p>As a system of process accountability, the proposed accreditation procedures coincide with the annual cycles of decision-making in schools, districts, and educational institutions. The accreditation procedures must be repeated annually, and the accreditation process updated annually in order to function as a mechanism of process accountability.</p> <p>The department concurs with comments expressing concern about the transparency of the process, and intends to make available to the public the status of required reports as they are submitted by schools, districts, and educational programs.</p>
Concern that the proposed rule lacks specific criteria for determining accreditation status of schools, including criteria that may unfairly disadvantage schools serving to reengage over-aged and under-credited students.	A correct understanding of the implications of the rule for districts, schools, and other educational programs may require additional guidance from the department, and commits to reinforcing in plain language the level of autonomy local decision makers have within the legal requirements that are the focus of the proposed procedures for accreditation. The accreditation process is distinct from and will function alongside current accountability processes, and unlike considerations for other, current accountability issues, accreditation will focus primarily on processes.
Concerns about including statutory requirements not related to accreditation.	The proposed rule associates compliance with statutory and regulatory requirements with accreditation status. In short, criteria for approval accreditation status depend substantially upon compliance with the law.

## Response to Public Comment

### 6.19.4 NMAC, Accreditation Procedures

Public comment included concern about department approval of accrediting entities.	The new rule's provision of the department's authority to approve accrediting agencies continues from 6.81.2 NMAC, last amended in 2009 and being repealed at this time, and as such is not a novel provision. The repealed rule listed accrediting entities, but the proposed new rule leaves the selection to department guidance.
Concern about the fairness of the appeal process, including an absence of reference to the Administrative Procedures Act, the requirement for the local school board rather than the district's administrative team to present the appeal, the lack of a suitable appellate body other than the Secretary, the timeline not clearly being outlined, the administrative burden of multiple concurrent appeals upon the department, lack of graduated level of consequences, need for a provision of appeal in district court, and the harsh penalties of the disapproval.	While the rule does not cite the Administrative Procedures Act, the procedure is designed to follow the law. The local school board or charter school governing body is ultimately accountable for its educational programs and may choose to be represented by any person or persons at the hearing. The penalties of disapproval are provided for in law and it is the obligation of the department to administer the law. Generally, no other administrative appellate body than the department, as represented by the Secretary, has the authority to consider administrative appeals from school accreditation decisions. Access to appellate review is provided for in court rules and no additional provision is required. The appeals timeline in the proposed rule may be represented more clearly in department guidance without altering the proposed rule.
Concerns about the issue of local control, the top-down approach to supervising public education, and infringement on local autonomy.	Sections of statute relating to the autonomy of local school boards include provisions for approval or disapproval of educational programs by the department based on statutory as well as regulatory and guidance requirements and standards set by the department. The plenary, supervisory authority of the department is noted in the findings of fact of <i>Martinez &amp; Yazzie v. State of New Mexico</i> .
Concerns about flexibility to accommodate diverse approaches.	Changes to the proposed rule will clarify the flexibility of decision making allowable within the parameters of statute, rule, and department guidance. Within existing parameters of law, the judgments, decisions, and choices of school boards, superintendents, and other district and school leaders may vary widely. The proposed rule does not make changes to the legal parameters within which local decisions are made. The department will include additional citations of statute and rule as changes to clarify the authority of the department to administer the law.
Concern about the relationship between accountability and accreditation and the transparency of criteria used to make accreditation decisions.	Department guidance will clarify the relationship between accreditation as found in rule and law and accountability systems in the School Support and Accountability Act and the Assessment and Accountability Act.
Preference for a formalized process in which parents determine status of the school.	The department values parent involvement in public education and believes that the making the accreditation reports public will provide transparency necessary for greater parent involvement and accountability for schools' compliance with law.



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<b>Concerns about specific requirements of the proposed rule</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Public comment included concern about duplication of reporting requirements, including references to against Gov. Michelle Lujan Grisham's executive order directing the New Mexico Public Education Department to reduce burdensome reporting requirements by 25%.	The department intends not to duplicate statutorily required reports in the proposed accreditation procedures. The rule provides that, for the purpose of the annual accreditation cycle, existing reports submitted to its bureaus and divisions will be verified.
Concerns about legality of penalties for disapproval status, including removal of board members, and closure of school.	The proposed consequences of disapproval accreditation status are provided for in statute.
Concern that the requirement for 95% participation rate in required assessments, citing ESSA, misinterprets that rate, which is intended to be a standard statewide.	The last sentence of 6.19.4.8(A)(5) will be deleted in the final rule.
Concern about the requirement in the proposed rule for budgeting at least as much for special education, gifted education, and at-risk programming as is generated for the budget entity in the corresponding program units.	The department is required by <a href="#">Section 22-8-11 NMSA 1978</a> to "ensure that each program in a school district or charter school's operating budget meets the requirements of law and the department's rules and procedures and that no school district or charter school generates program units for a program not meeting the requirements of law and the department's rules or procedures". It is the legal obligation of the department not to allow revenue generated from these program units to be used for other purposes.
Concern that the requirement in the proposed rule to report actual expenditures will be overly burdensome to schools.	Reporting actual expenditures will not significantly increase the administrative burden of schools.
Concern that current practices in schools diverge substantially than the requirements for subjects to be taught at various grade levels, and compliance would significantly increase problems with staffing.	The department's legal obligation is to enforce statutory requirements as listed in the proposed rule for subjects taught at each grade level.
Concern about the use of the term "historically defined Indian-impacted".	This is the statutory language with accompanying legal definition appropriate for the proposed rule.
Suggestion to collaborate with existing accreditation entities to accredit all public schools.	State accreditation as proposed in the rule and accreditation by approved entities are two parallel systems that complement but cannot take the place of each other.

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Concern about the effective date of the proposed rule.	Changes to the proposed rule will provide for an appropriate effective date.
Concern about the requirement for reporting about counselors' caseloads.	The department values the work of school counselors and values the data that will be collected as an essential component of the annual report.

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<b>Concerns about the rulemaking process for this proposed rule.</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Public comment included concern that other proposed rules have drawn attention away from this rule in the concurrent rulemaking process, and that the time for public comment should be extended.	The department believes the public comment period has been more than sufficient to collect actionable public comment.
Concern about the top-down nature of the rulemaking process and the proposal of administrative law independent of the legislative process.	The department takes public comment seriously and considers every concern and suggestion for changes in the proposed rule, giving the voices of all equal consideration. Administrative law resulting from the rulemaking process is essential to the work of the executive branch within the parameters of statute, and is provided for in current statute as enacted by the legislature
Public comment included concern that there was not tribal consultation during the rulemaking process.	The department has followed its policy in consulting with Tribal Education Directors for this rule as for other rules and directed participants in the consultation to submit official public comment if desired.
Concerns that the rulemaking process did not involve collaboration with local stakeholders, educators, and parents, leading to unintended consequences and challenges for schools and breaking trust with educators, possibly hindering retention and recruitment of educators.	Changes made as a result of public comment are a typical part of the department's rulemaking process. Collaboration is key to the process, which includes public notice of proposed rule, collection of public comment, response to public comment, and changes made to the proposed rule as a result of public comment, all governed by the laws of rulemaking. The department appreciates that these laws of rulemaking equalize the voices of all who comment. The voices of all members of the public are equal in weight, whether they are children or elders, charismatic leaders of a community or organization or are rarely civically engaged individuals. To ensure fairness in drafting the proposed rule, the department considered administrative procedures deemed necessary to execute and administer the law, then developed draft administrative law along those lines, and intends to make changes it deems appropriate in collaboration with the public within provisions law.
Concerned that speaking slots were not reserved for public hearing	Nothing in the State Rules Act, Section 14-4-1, et seq., NMSA 1978 or the default procedural rules for rulemaking, Rule 1.24.25 NMAC, require the reservation of specific speaking slots in the consideration of public comment at public rule hearings.

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<b>Concerns about the accreditation of charter schools</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Public comment included concern that charter schools should be accredited by their authorizers, not the department.	As provided for in Section 22-8B-5(D) NMSA 1978 "A charter school shall be a public school accredited by the department and shall be accountable to the chartering authority for purposes of ensuring compliance with applicable laws, rules, and charter provisions." The department sees this as an obligation to accredit locally chartered and state-chartered charter schools. Changes to the final rule will make it clear that, after collecting and verifying required reports, the department will notify a charter school's authorizer for the purpose of accountability.
Public comment included concern about accountability to both the department and an authorizer and the need to find alignment with information already being submitted to the department by charter schools.	Accountability of charter schools lies with the authorizer, but includes legal compliance, which is supported by the department's accreditation process for charter schools. The compliance component of the Performance Framework annual review for state-chartered charter schools will align with required reports for the annual accreditation cycle.
Concern that locally authorized charter school would be designated with the annual accreditation status of their LEA unless otherwise determined by the secretary, like other schools within the LEA.	Changes to the proposed rule will exclude locally chartered charter schools from this specific provision.
Suggestion to make the Public Education Commission an approved accrediting entity.	The Public Education Commission's role as an authorizer of state-chartered charter schools is not compatible with accreditation authority.

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<p>Specific suggestion for 6.19.4.12(B):</p> <p>C. If the department confers disapproval accreditation status upon a charter school, the department</p> <p>(1) may suspend personnel from authority and responsibility pursuant to Section 22-2-14 NMSA 1978;</p> <p>(2) may execute other remedies in the public school code provided to the department secretary or the department that may be appropriate; and</p> <p>(3) shall request that the charter school's authorizer for purposes of</p> <p>(a) ensure that the charter school develop a plan to correct the organizational or programmatic deficiencies contributing to disapproval or, if the school fails to provide an adequate plan for the PED to approve accreditation, direct the organizational and educational program planning changes needed for accreditation to be provided by the PED;</p> <p>(b) if appropriate, consider suspension, revocation, or nonrenewal of the charter of a state-chartered or locally chartered school, as provided for in Paragraph (5) of Subsection K of Section 22-8B-12 NMSA 1978;</p>	<p>Changes to the proposed rule will include appropriate consequences for charter schools in a separate Subsection (C).</p>
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<b>Concerns about the impact of the proposed rule on small schools</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Public comment included concern that smaller schools might be disproportionately affected by accreditation requirements, leading to unfair comparisons and pressure to conform at the expense of their unique strengths and effective practices.	The department values innovative, successful practices explored and demonstrated by many schools throughout the state. Nothing in the proposed rule restricts the practices of schools beyond the provisions of current law.
Public comment included concern about consequences of consolidating school districts in communities that value local control.	The consequence of consolidating districts as a result of accreditation procedures is provided for in state statute. <a href="#">Section 22-4-3 NMSA 1978</a> refers to a “disapproval accreditation status” that may contribute to justification for action to consolidate a school district with a neighboring school district.