

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, 22-2-1, and 22-2-2 NMSA 1978

Rule adoption date:
03/14/24

Rule effective date:
07/01/24

Reasons for adopting rule: The purpose of the proposed repeal is to adopt a new rule 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.

At a public hearing held on 12/18/2023, the Public Education Department agreed to repeal 6.81.2 NMAC, Requirements for Nonpublic Schools and for Public Education Department Accreditation, filed 12/31/98 and effective 12/31/98. The purpose of the proposed repeal is to ensure alignment with the adoption of 6.19.4 NMAC, Accreditation Procedures.

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. For 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 "6.81.2 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 of Policy, Research and Technology

Signature: (BLACK ink only OR Digital Signature)

Date signed:

DocuSigned by:



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03/14/24

Response to Public Comment

6.81.2 NMAC, Requirements for Nonpublic Schools and for Public Education Department Accreditation

RULE CHANGES	
Section	Change
No changes	No changes

Public Comment Period: November 7 – December 18

The New Mexico Public Education Department (PED) received 39 public comments for 6.81.2 NMAC, Requirements for Nonpublic Schools and for Public Education Department Accreditation. 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
Concern that the repeal of 6.81.2 NMAC would lead to a requirement for BIE schools and nonpublic schools to seek state accreditation or to a requirement for them to seek accreditation by approved accrediting agencies. Concern that the rule uses the word “shall” for nonpublic and BIE schools in the accreditation process. Concern that the New Mexico Public Education Department is trying to impose accreditation mandates on Bureau of Indian Education schools when it does not have the right.	The department retains authority to observe the operation of nonpublic and BIE schools; the authority exists in this rule proposed for repeal, at Section 6.81.2.8(C) NMAC, and was transferred to the newly proposed rule, 6.19.4 NMAC.

Concern that the proposed rulemaking would give the department the authority to observe the operation of as well as approve or disapprove the accreditation of private, nonpublic schools. Concern that the Secretary is overstepping his authority by mandating accreditation upon non-public schools that are accredited through other state-approved agencies.	The department retains authority over other accrediting agencies; the authority exists in the rule proposed for repeal at Section 6.81.2.8(H) and (I), and was transferred to the newly proposed rule, 6.19.4 NMAC.
Concern that repealing 6.81.2 NMAC would impose ineffective public agency oversight over Christian schools. Concern that repealing 6.81.2 would reduce the quality or in no way improve the quality of private school education.	Requirements in the proposed rule 6.19.4 NMAC for nonpublic schools, including denominational or sectarian schools, seeking accreditation remain largely similar to those in the rule proposed for repeal, 6.81.2 NMAC.
Concern that repealing the rule would add additional administrative burden to schools who handle their accreditation through an entity other than PED.	Administrative burden for nonpublic schools seeking accreditation would remain similar to the current, as the rule proposed for repeal requires the submission of a number of reports at 6.81.2.8(A), which are also required under the newly proposed rule, 6.19.4.9(B) NMAC. Newly required reports include graduation requirements, and attendance policies under the Attendance for Success Act, which replaces reference to the now repealed Compulsory School Attendance Law.
Concern that the rule does not honor district flexibility, particularly in rural areas.	School districts do not administer nonpublic or BIE schools, so district flexibility is not an issue raised by the proposed repeal of 6.81.2 NMAC.
Concern that repealing 6.81.2 NMAC would mandate that non-public schools follow the same accreditation process as public schools.	The accreditation procedures for nonpublic and BIE schools remain substantially similar in the proposed rule, 6.19.4 NMAC, to what they are in the rule proposed for repeal, 6.81.2 NMAC, and require the submission of similar reports and other information.
Concern that the rule will infringe upon parents' right to freely educate children through private schools or homeschooling.	Requirements in the proposed rule 6.19.4 NMAC for nonpublic schools, including denominational or sectarian schools, seeking accreditation remain largely similar to those in the rule proposed for repeal, 6.81.2 NMAC. Home schools are not subject to the accreditation requirements of either the current rule proposed

	for repeal or the newly proposed rule.
Concern that current accreditation processes by approved accrediting agencies without the proposed rule change will negatively affect the school choice they can offer parents and families.	Requirements in the proposed rule 6.19.4 NMAC for nonpublic schools, including denominational or sectarian schools, seeking accreditation remain largely similar to those in the rule proposed for repeal, 6.81.2 NMAC.
Concern that before the proposed repeal and replacement of the rule, the Public Education Department did not have formal tribal input sessions with New Mexico's tribes, pueblos, and nations.	The department did consult with the state's nations, tribes, and pueblos via TED meeting prior to proposing the repeal and replacement of 6.81.2 NMAC.
Concern that eliminating 6.81.2 NMAC would reduce non-public schools' autonomy by imposing the new 180-day school year mandate.	The replacement of this rule, 6.81.2 NMAC, with 6.19.4 NMAC, does not impose a minimum number of days for the calendars of nonpublic schools.