

## 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, 22-2-2, 22-2-8.1, 22-8-23.14, 22-8B-5, 22-13-1, 22-13-1.1, 22-13C-10, and 22-22-1 et seq. NMSA 1978.

Rule adoption date:

March 14, 2024

Rule effective date:

July 1, 2024

Reasons for adopting rule:

The purpose of the proposed rulemaking is to incorporate changes enacted by House Bill 130 (HB130), K-12 Plus Program, from the 2023 legislative session.

The New Mexico Public Education Department is repealing 6.10.5 NMAC School Calendar Requirements, filed 12/31/1998, and replacing it with 6.10.5 NMAC, School Instructional Time Requirements, to be adopted 03/14/2024 and effective 7/1/2024.

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**  
**6.10.5 NMAC, School Instructional Time Requirements**

<b>22-8B-5RULE CHANGES</b>	
<b>Section</b>	<b>Change</b>
<b>6.10.5.5 Effective Date</b>	<ul style="list-style-type: none"> <li>• Replace “January 16” with “July 1.”</li> </ul>
<b>6.10.5.7 Definitions</b>	<ul style="list-style-type: none"> <li>• Subsection A: Insert ““Early college high school”” means a four-year high school that meets the qualifications outlined in 6.30.13.9 NMAC” and renumber the following subsections.</li> <li>• Subsection B: Insert “Four-day calendar” means a school calendar with all weeks having at most four instructional days” and renumber the following subsections.</li> <li>• Subsection C: Replace “but shall not include professional work hours” with “Two instructional days per year may be used for parent-teacher conferences”.</li> <li>• Subsection D: Replace “and includes” with “except for those instructional hours designated as professional work hours according to Subsection J of Section 8 of this rule, and may include.”</li> <li>• Subsection E: Insert “Instructional hour with students” means an instructional hour that is not a professional work hour; up to two days-worth of instructional hours with students may be for parent-teacher conferences.” And renumber the following sections.</li> <li>• Subsection F: Replace “the minimum requirement of 180 instructional days specified in Section 8 of this rule” with “155 instructional days for four-day calendars and 180 instructional days for five-day calendars.”</li> <li>• Subsection K: Replace “time” with “instructional hours.”</li> </ul>
<b>6.10.5.8 Requirements</b>	<ul style="list-style-type: none"> <li>• Insert: All students shall be in a minimum of 1,140 instructional hours per school year, exclusive of lunch, lunch recess, and lunch passing periods. Beginning in the 2024-25 school year:”</li> <li>• Subsection A: Delete all and insert “Secondary students shall attend a minimum of 3.5 instructional hours per instructional day, unless a secondary student provides 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 other similar activities. Instructional hour requirements for students with individualized education programs (IEP) shall follow the requirements of the IEP.”</li> <li>• Subsection B: Delete all and insert “All public schools that are not exempt shall have calendars with at least 180 instructional days.”</li> <li>• Subsection C: Delete all and insert “Early college high schools shall be exempt from the minimum 180 instructional day requirement.”</li> <li>• Subsection D. Delete all and insert “As reading, language arts is foundational to student achievement in core subject areas, school districts and charter schools will be exempt from the minimum 180 instructional day requirement if they meet certain proficiency and growth targets in reading, language arts as determined by the secretary.”</li> <li>• Subsection E. Delete all and insert “The length of instructional days and school days shall be a minimum of five and one-half instructional hours per full day and a minimum of three and one-half instructional hours per half day. Instructional days shall be no longer than seven and one-half instructional hours.”</li> <li>• Subsection F. Delete all and insert “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.”</li> </ul>

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	<ul style="list-style-type: none"> <li>• Subsection G: Delete all and insert “Remote instruction may comprise no more than four instructional days, or 32 hours per school year, and at least fifty percent of remote instruction must be synchronous remote instruction, except for: <b>(1)</b> hardships included in Subsection I of this section; or <b>(2)</b> optional instructional programs, charter schools in accordance with the contract between the school and its chartering authority, or schools without attendance boundaries.”</li> <li>• Subsection H: Delete all and insert “When instructional hours are lost to weather or other events that cause the total school year instructional hours to drop below 1,140, or that cause a reduction in the total number of instructional days or school days, the school calendar shall be amended so that students receive a full school year pursuant to Subsection A of this section and so that the number of scheduled K-12 plus days are maintained.”</li> <li>• Subsection I: Insert “Due to hardship, the secretary may waive, on a case-by-case basis, for a current school year the required length of instructional days provided that the calendar is adjusted to ensure that the students receive a minimum of 1,140 instructional hours per school year. Hardships shall include but not be limited to: <b>(1)</b> severe acts of nature; <b>(2)</b> natural disasters that affect a community after which rescue, repair, and grieving are critical to the community’s recovery; <b>(3)</b> community or statewide health emergencies, where warnings about pandemics or epidemics have been issued by the department of health or the department; <b>(4)</b> the passing or prolonged illness of key school staff; or <b>(5)</b> violent or other disruptive acts committed on school property that necessitate a lockdown or necessitate total or partial closure of a school.”</li> <li>• Subsection J: Insert “Up to 60 instructional hours per school year for primary grades and up to 30 instructional hours for secondary grades may be used for professional work hours, provided that professional work hours are scheduled before, after, or on a day other than the required minimum 180 instructional days. When calculating a school’s total number of instructional hours, time shall not be double counted as both instructional hours with students and professional work hours.”</li> </ul>
<b>6.10.5.9 K-12 Plus Program</b>	<ul style="list-style-type: none"> <li>• Subsection A: Delete all and replace with “Each school district or charter school with board-approved and PED-approved calendars longer than 180 school days for five-day school calendars and longer than 155 school days for four-day school calendars shall be eligible to receive K-12 plus program units for students in kindergarten through twelfth grade.”</li> <li>• Subsection B: After “program units” insert “for five-day calendars”</li> <li>• Subsection C: Insert “The number of K-12 plus program units for four-day calendars is determined by multiplying the membership in each eligible school by: <b>(1)</b> the cost differential factor of 0.012 and then by the number of K-12 plus days between 156 and 165 days; and <b>(2)</b> the cost differential factor of 0.016 and then by the number of K-12 plus days between 166 and 175 days.</li> <li>• Subsection D: replace “a calendar of between 181 and 205 instructional days” with “K-12 plus days.”</li> </ul>

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

The New Mexico Public Education Department (PED) received 2,871 public comments for 6.10.5 NMAC School Calendar Requirements. 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.

1. Support for the rule	
Summary of Comments	PED Response
Public comment included support for the minimum 180 days in the proposed rule. Additional teacher time required should be compensated. Including additional PD time for teachers is good.	The department concurs with many of the points made in support of the proposed rule.
Public comment included support for the proposed rule as a way of improving national standings for schools in NM and increasing achievement scores overall because extended learning time works to improve educational outcomes, focusing on the needs of students rather than adults in school.	
Public comment included support for mandating five-day weeks for the benefit of families who depend on school for child care and meals, for children whose days in a four-day week are too long, and for drivers whose day is too long and divided by hours in the middle of the day without pay, to reduce juvenile crime and improve child welfare overall, to ensure that students have enough time for a well-rounded education, for helping students to be prepared for five-day weeks at work and college, based on personal experience that students lose learning on three-day weekends, due to the fact that curriculum and pacing guidelines are typically written for five-day weeks, and for the longer school years that may result from four-day week calendars.	
Support for mandating five-day weeks as an equity issue, benefiting rural, marginalized populations.	
Support for mandating five-day weeks because the shorter weeks offer minimal cost savings. Comment that four-days weeks are being abused and a five-day week would allow for more instruction. Suggestion to make 180 days and 5.5. hours standard minimum across the state.	
Support for increased instructional time overall, including recognition that time for students in class has been reduced for many since HB130 was enacted.	
Support for administrative actions taken to reduce the independent decision-making authority of school districts.	

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2 . Concerns about specific details of the rule	
Summary of Comments	PED Response
Public comment included concern about recess not counting as instructional hours, and about minimum student lunch time of 30 minutes	<p>Recesses are included as instructional hours with students except for lunch and lunch recess.</p> <p>To maximize student learning time, the department deems it is necessary to continue exclude these activities from the definition of instructional hour, enforcing the provision of Section 22-2-8.1 NMSA 1978 which defines valid counts of instructional hours as “exclusive of lunch.”</p>
Public comment included concern about schools adapting to the five-day week requirements by the 2025 school year.	Though this may prove challenging, the proposed time frame is manageable.
Public comment included concern about the meaning of the required four class period each day and its impact on block scheduling and the rate of credit earning in high school. Concern that proposed rule would limit schedule flexibility (free periods, afternoon jobs, internships, etc.) for students in high school by requiring them to attend four class sessions per day.	Changes to the proposed rule will reflect this concern, replacing the requirement for a minimum of four class periods with a minimum requirement for 3.5 instructional hours.
Public comment included opposition to setting a minimum number of days or minimum hours of in a school day.	The proposed rule is consistent with national trends. More than thirty states across the country impose a 180-day minimum school calendar.
Public comment included concern about the requirement for instructional hours to be on campus, disregarding the instructional hours in dual credit classes at a postsecondary institution.	This is not a requirement of the rule.
Public comment included opposition to the incentives for schools to go beyond the 180-day requirement.	The requirement for funding days of five-day calendars beyond 180 days is found in Public School Finance Act Section 22-8-23.14 NMSA 1978, as amended by House Bill 130 (HB130) (2023).
Public comment included concern that the rule allows for different number of PD hours at secondary and elementary levels.	The different professional work hour requirements for elementary and secondary in the proposed rule aligned with the of the requirements of Section 22-2-8.1 NMSA 1978 of the Public School Finance Act, as amended by HB130 (2023).
Concern that proposed rule does not allow schools to incorporate half days into the schedule.	Half days are allowed and explicitly defined as 3.5 instructional hours per day in the proposed rule.

## Response to Public Comment

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2 . Concerns about specific details of the rule	
Summary of Comments	PED Response
Concern that the proposed rule limits or reduces remote, online learning time, which is helpful for rural communities. Concern that online schools with an asynchronous model for their students would have to abandon that approach, limiting schooling options for students in the process.	The rule allows for remote learning in optional instructional programs which rely entirely on remote learning. For other instructional programs the rule allows for up to four instructional days or 32 instructional hours per school year and permits up to half of that remote learning time to be asynchronous.
Concern about managing childcare during professional work hours when their children are not at school.	The rule allows professional work hours but does not require professional work hours.
Concern that the rule would prevent schools from allowing children a full eight-week summer vacation from school.	Nothing in the proposed rule would eliminate the option of a calendar with an eight-week summer.
Suggestion that the rule be changed to allow school districts and charter schools more flexibility or a waiver for their calendars if they meet achievement growth standards set by the department, and that districts receiving a waiver should be eligible for K-12 Plus program units.	The changes to the proposed rule accommodate this suggestion.
Concern that schools are still dealing with the recent changes and there is lack of stability by frequently making changes.	The rule aligns with Section 22-2-8.1 NMSA 1978, as amended by HB130 (2023).

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<b>3. Concerns about applying the rule to all the same rather than adapting and differentiating as needed.</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Concern about requiring extended learning time, rather it should be optional.	Though all schools will be required to have calendars including 180 instructional days, no school will be required to operate beyond the minimum. Extended learning time, then, would be optional.
Concern about requiring changes for schools that have consistently high test scores and graduation rates.	Changes to the proposed rule include provisions for waivers by the secretary for high performing schools. Changes to the proposed rule include provisions for schools to maintain four-day calendars. A wide variety of approaches to school calendars is provided for in the rule, allowing for each district to make decisions about calendars to best suit local needs.
Concern with one size fits all approach. Concern about the negative impact on innovation in schools. Concern that the rule will diminish the autonomy of school districts, school boards, governing boards of charter schools.	
Concern about requiring changes for schools in smaller school districts and rural areas.	
Concern about requiring changes for early college high schools and other career-technical education programs that must match their calendar to the host institution or use the 5 <sup>th</sup> day for classes at the host institution.	Changes to the proposed rule include an exception for early college high schools to the 180 instructional day minimum.
Suggestion that an application process be available for schools to request exemption from the required 180-day, five-day calendars.	Changes to the proposed rule provide for certain exemptions and waivers to be granted by the secretary.
Concern about how this will affect schools that use a blended approach between in-classroom time and “home-school” time (four days in school, one day at home).	The comment seems to suggest that one day each week at home counts as a normal school day in the calendar. Such a practice is not provided for in statute or rule.

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<b>4. Concerns that a 5 day week or 180-day minimum instructional days will negatively impact teacher retention and recruitment</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Public comment included concern about potential negative impacts on teacher retention, collective bargaining, teacher morale, and total compensation issues for teachers including summer breaks and holidays, commute time, professional development time, sick leave, and salary. Citation of John Hattie’s metanalyses that show “collective teacher efficacy” has a high effect size for student achievement, defined as teaching expectations and belief in themselves.	The proposed minimum 180 days for regular calendars is not a change from previous rule requirements.
Public comment included concern about potential negative impacts on teacher recruitment, specifically for rural communities and high-value real estate districts in which four-day weeks attract teachers from distant urban or suburban areas. Informal polling of staff by leaders at several districts resulted in up to 50% of teachers saying they would leave the district if required to do a 180-day calendar of five-day weeks.	
Public comment included concern about school staff who use the fifth weekday to travel to distant appointments, or to grade and plan.	
Public comment included increased workload for teachers already stretched too thin.	
Comment about how a five-day week would conflict with teachers who work a second job to make ends meet, and concern about whether teachers would be compensated for longer calendars.	
Concern that the minimum number of days would be increased to 180 for five-day school calendars.	



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5. Concerns that a 5-day week will negatively impact student well-being	
Summary of Comments	PED Response
Public comment included concern about the impact of a five-day week on students' agency, attendance, focus, engagement, anxiety, fatigue, illness.	The department holds student wellbeing in school as a top priority, whether in a four-day or five-day school week. Changes to the proposed rule provide for four-day calendars.
Public comment included concern about potential negative effects of spending more time in outdated, unhealthful school building with poor air quality for an extra day each week.	
Public comment included concern about negative impact of additional school days on student pursuits outside of school, including homework, family involvement in homework, student involvement in cultural activities in the local community, sports, hobbies, creative pursuits, tribal traditions and events, and religious activities.	
Concern about chronically ill students from rural districts who must schedule their medical appointments on the fifth weekday.	
Concern about losing one day a week to travel away from a rural food desert to buy better food.	
Concern about time on a school bus an extra day each week for schools switching from four-day to five-day calendars.	
Public comment included concern that classes will be shortened to accommodate teacher prep time.	Changes to the proposed rule define instructional hours with students to exclude teacher professional work hours.
Concern that adding more time to the school day or extending the school year would not be productive because students do not have long enough attention spans.	The department acknowledges the essential partnership between schools and families in educating children and strives to improve public education for groups that are minoritized and marginalized. Changes to the rule provide for schools to choose a four-day calendar that meets the department's definition in the rule.
Comment from a student that said a five-day week would decrease the amount of time they get to spend with their dad.	
Concern that this rule negatively impacts minorities and low-income rural communities the most.	
Comment that this requirement would increase student absenteeism.	

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<b>6. Concerns that a 5-day week or minimum 180 days of school will have a null or negative impact on student outcomes</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Public comment included concern that the additional instructional time requirements will result in poorer student performance, including student well-roundedness, achievement, attendance, and graduation rates. Higher performance may be attributed to four-day weeks due to students being in school for longer blocks of time, with time for interventions, and tutoring. Higher performance may be attributed to four-day weeks because the extra day off of school allows for studying and homework time for students.	The department relies on evidence to suggest that a minimum 180 days of school will contribute to improved student outcomes. Changes to the proposed rule provide for four-day calendars as well as five-day calendars.
Public comment included concern that requiring a fifth day of a school in a week or a minimum of 180 days of school will not improve student outcomes, and that there is a lack of data to support these requirements.	
Concern that the arts, physical education, library, and technology classes will be cut with the shorter school days of a five-day week.	The rule does not directly limit course offerings or subjects of instruction.

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**7. Concerns that a 5-day week or minimum 180 school days will negatively impact families and communities who are on 4-day week calendars**

Summary of Comments	PED Response
Public comment included concern about the negative impact on families that work together in rural and agricultural livelihoods on three-day weekends afforded by four-day school weeks.	Changes to the proposed rule provide for four-day calendars.
Public comment included concern about the negative impact on families that spend time together on three-day weekends afforded by four-day school weeks. This includes students that have visitation with a noncustodial parent on the fifth day, and students that are needed by the family for childcare of younger siblings.	
Public comment included concern about the impact of requiring five-day school weeks on community-based education, community use of school facilities, and family-based learning on three-day weekends afforded by four-day school weeks.	
Comment included concern that communities would be negatively impacted by the requirement for five-day weeks, with increases in law enforcement issues in schools; erosion of rural customs, work ethic, and culture; change in operating hours for clinics and other businesses; reduced civic engagement by visiting the legislature; reduced labor force needed for local businesses; reduced participation in arts and cultural activities; and increased pollution from transportation,	
Comment included concern that students' and teachers with second jobs' work on three-day weekends would not be able to continue.	
Concern about the danger of rural roads and of transporting students an additional day each week in a five-day school week.	
Comment included concern that students currently enrolled in a four-day school may spend less time with parents, especially single-parent households or with parents who work multiple jobs.	
Comment that for rural students, shopping, and doctor facilities are a minimum of an hour away.	
Concern that the added transportation for a five-day week would pollute the environment unnecessarily and cost.	
Some businesses and government offices in small communities also operate on four-day weeks, like the schools. Abolishing four-day school weeks would ruin continuity in these communities.	

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<b>8. Concerns that PED prioritize other approaches and requirements instead of calendar requirements.</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Suggestion to prioritize afterschool and summer enrichment programs, outside of school learning time, a balanced calendar, and year-round school.	The proposed rule does not limit these options.  These concerns reflect many high priorities for the department. The proposed rule does not limit these initiatives which are at the discretion of the local school board or governing body.
Suggestion to prioritize community schools, smaller class sizes, social supports, certified librarians, time management training for teachers, quality of instruction, additional non-teaching staff such as educational assistants and attendance support personnel, student attendance, parent accountability, instructional materials, supplies, specialized interventionists, athletic schedules, improved special education, improved access to early childhood education and care; and to deprioritize required testing days.	
Suggestion to prioritize stability and local control, over changes directed by PED, and to reduce administrative burden for schools and paperwork for teachers.	
Suggestion to prioritize student and parent involvement and safe and healthy communities, and to address hunger, and health care for teachers.	
Suggestion to prioritize educator professional development, educator preparation programs, teacher planning time, and recruitment of qualified teachers.	
Suggestion to prioritize online learning opportunities, downtime for students, and creative expression for students.	
Suggestion that, if improving academic performance is truly the goal of the rule, schools should try to eliminate school sports and the associated pep rallies.	

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<b>9. Concerns that requirements of rule are counter to research</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Public comment included concern that research does not support the five-day requirement and 180-day minimum calendar, noting that, in New Mexico, many school districts on a four-day week are successful.	The department relies on evidence supporting the provisions of the rule for a minimum of 180 instructional days to improve student outcomes. Changes to the proposed rule provide for a waiver to the 180-day minimum for high-performing charter schools and school districts.
Concern that four-day weeks decrease per capita bullying and fighting incidents, and that a required five-day week calendar will negatively impact these benefits.	
Public Comment: “As published by the NMPED, in the 2023 NM Vistas (nmvistas.org) report on November 14, 2023: Four- day school week districts consistently perform higher than five-day school week on reading and math scores, both in overall percentiles and growth. In addition to this, high school graduation rates are higher in four-day--week schools than in five-. Cliff Schools specifically are designated by NM Vistas as exemplary schools, with Cliff Elementary School designated a School of Excellence in the top 10 percent of schools, and Cliff High School as a Spotlight Campus in the top 15 percent of all schools.”	
Concern that there is little evidence increasing the number of required schooldays increases student outcomes. According to the Institute of Educational Sciences' 2014 article, authored by the American Institutes for Research, increasing learning time only minimally impacts student literacy and math scores in elementary schools, and negatively affects literature scores for middle school students.	

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<b>10. Concerns that the proposed rule contradicts relevant statute.</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Concern that the Public School Finance Act explicitly authorizes schools to operate on either a four-day or five-day school week. Since the legislature acknowledged the existence of four-day-week schools and authorized them to generate additional dollars if they choose to extend their calendars in HB130, the PED may not write rule that eliminates this opportunity for schools to choose to operate on a four-day per week school calendar, according to the State Rules Act.	<p>While statute introduces funding formulas for the newly introduced terms “four-day calendar” and “five-day calendar”, it does not define either term, leading to ambiguity about whether calendars proposed by schools are four-day or five-day. Nothing in statute prevents the agency from continuing to require a minimum of 180-day school calendars as per the existing rule 6.10.5 NMAC.</p> <p>The proposed rule defines “school day” in accordance with the term “normal school day” in Section 22-2-8.1 NMSA 1978, including any combination of instructional hours and professional work hours. The rule adds a definition of “instructional hour” as excluding professional work hours, which is necessary to further define the terms “four-day calendar” and “five-day calendar”.</p>
Public comment included concern that the rule’s requirement of a minimum number of days contradicts statute, which provides for a minimum number of hours but no minimum number of days.	The rule still requires districts to meet minimum hour requirements. Simultaneous requirements for minimum day and minimum hours do not inherently conflict with each other.
Public comment included concern that the Senate Bill 4 (2023) amendment to the Healthy Hunger-Free Students’ Bill of Rights Act (Chapter 22 Article 13C NMSA 1978) has a lunch requirement of 20 minutes seated in grades K-5 that conflicts with that of the proposed rule, which is a minimum of 30 minutes overall for lunch recess.	The proposed rule’s minimum of 30 minutes lunch recess may include 20 minutes of seated lunch time as provided for in Chapter 22 Article 13C.
Concerns that the proposed rule is unclear about whether a conference day may be counted, as found in statute.	Changes to the proposed rule allow two parent conference days to count as instructional days.

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<b>10. Concerns that the proposed rule contradicts relevant statute.</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
<p>“The proposed rule introduces maximum hours in a school day without explicit statutory authorization. Identifying the specific statutory provisions granting the Secretary the authority to establish such limits is imperative. Further, this section of the proposed rule would not apply to charter schools that exercise a nondiscretionary waiver associated with “Length of School Day” NMSA 22-8B-5(C). The rule mandates a 30-minute lunch period, which directly contradicts the 20-minute lunch period stipulated in statute (NMSA 22-13C-10). It is crucial to adhere to statutory limitations and recognize the bounds of PED's authority in prescribing lunch periods.”</p>	<p>The statutory authority of the secretary to “have control, management, and direction of all public schools, except as otherwise provided by law” is provided for in Section 22-2-1 NMSA 1978.</p> <p>The PED acknowledges the statutory provision in NMSA 1978, Section 22-8B-5, for waivers. The rule is not in conflict with that statutory provision. NMSA 1978, Section 22-8B-5 stands on its own, and, therefore, would not need to be included in the rule.</p>
<p>Concern that the proposed rule appears to require 1140 hours of instructional time exclusive of professional time.</p>	<p>The rule aligns with statutory provisions for up to 60 professional work hours to count towards instructional hours in elementary schools and 30 professional work hours to count towards instructional hours in secondary schools.</p>

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11. Concerns about the rulemaking process and authority of the PED	
Summary of Comments	PED Response
Public comment included concern that stakeholder input was not considered prior to the proposed rulemaking, including teachers and school boards as stakeholders. Recommendation to visit every school before making rule to affect calendars, and to work with the Education Partners before making a rule. Stakeholders such as superintendents, parents (especially those in four-day schools), and teachers and staff were not meaningfully consulted. The first time that most of us heard about the rule was when it was already written. Suggestion to be pragmatic and realize that people need to drive this endeavor and be part of it, whatever it is, or it will fail.	The department welcomes constituent input and feedback on all proposed rules as part of the rulemaking process, pursuant to Rule 1.24.25 NMAC. The department published notice of the rulemaking and a draft of the proposed rule. The department collected stakeholder input during the public comment period, which included the in-person public hearing. Public comment was submitted in writing by mail or email or direct submission at the public hearing; oral comment at the hearing was also recorded. All relevant public comment was considered without bias toward the method of communication or the identity of the commenter. All public comment considered by the department prior to adopting the final rule. Public comment is summarized and responded to, and any changes in the adopted rule in response to public comment is also contained within this document. This document is to be published along with the concise explanatory statement.
Concern that rulemaking is an alternate form of lawmaking by an agency, circumvents the democratic process of lawmaking through the legislature, disenfranchises voters, and is disrespectful to legislators.	The department's authority to promulgate administrative rules is explicitly conferred in Section 22-2-1 NMSA 1978. Rulemaking is not an "alternative" to legislation, but rather is a quasi-legislative power that is directly delegated by the legislature to executive agencies; the legislature retains ultimate authority over both rulemaking in general and specific areas of potential rule in particular. The requirements regarding public notice and participation provided for in the State Rules Act (Chapter 14, Article 4 NMSA 1978) and the Default Procedural Rule for Rulemaking (Rule 1.24.25 NMAC) are intended to address this apparent lack of direct democratic access to executive agency administrative rulemaking, and all agencies must adhere to them.



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<b>10. Concerns that the proposed rule contradicts relevant statute.</b>	
<b>Summary of Comments</b>	<b>PED Response</b>
Concerns about the rule hearing being scheduled at a time when educators cannot attend and in a place far from the rural schools most impacted by the changing requirements in the proposed rule, as well as about timing the proposal of the rule very early in the first year of implementation of new calendar requirements. Concern that introducing the rule change in the middle of the school year gives superintendents and school staff, who are already swamped with work, little time to analyze the proposal. Concern that the effective date of the new calendar requirements would not be manageable for designing new school calendars for the 2025 school year.	The department recorded, considered, and responded to all public comment received during the public comment period. The department's consideration of comments was without bias toward the method of submittal, whether it was in-person or in writing. The timing of the proposed rulemaking was appropriate to coincide with requirements for submission of school budgets and calendar timelines.

## Response to Public Comment

### 6.10.5 NMAC, School Instructional Time Requirements

12. Concerns about school funding and finances	
Summary of Comments	PED Response
Public comment included concern that extending the school year would be costly for schools with the fewest days in their current calendars. Concerns were also expressed about the cost effectiveness of switching from a four-day to a five-day calendar and whether the funding formula will be sufficient to make up gaps between the current calendar day count and the minimum required by the proposed rule. Specific increases in costs include transportation, overhead, and food services.	The proposed rule equalizes expectations for school calendar minimum instructional days. Those schools with calendars that are currently below the proposed rule's minimum number of instructional days are expected to function within the same funding parameters as those schools with calendars currently at the minimum number of instructional days. The department contends that schools with calendars with far fewer instructional days than are required by the proposed rule will not be subject to unfair financial burdens in complying with the provisions of the rule. The legislature distributes operational funding to schools based on program cost differentials in the statewide equalization guarantee (SEG) of the Public School Finance Act, Sections 22-8-1 et seq. NMSA 1978. This statutory distribution mechanism and the annual appropriation to the SEG are intended by the legislature to provide sufficient funding for all schools.
Concern about the revenue generated for extended learning covering the gap between the current number of days and the K-12+ program unit minimums.	
Comment about by having Friday's off, school saves a lot of money on cafeteria staff, food for students, utilities, and bus transportation	