

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, 22-2C-4, 22-2C-5, 22-2F-2, and 22-2C-11NMSA 1978.
20 USC 6303 Sections 1003 and 1111.

Rule adoption date:

October 12, 2023

Rule effective date:

October 24, 2023

Reasons for adopting rule: At a public hearing on 9/19/2023 the Public Education Department agreed to repeal 6.19.8 NMAC, School Improvement Designations filed 5/23/2023 and replace it with 6.19.8 School Differentiation and Support, adopted 9/28/2023 and effective on 10/10/2023.

Rule information: The proposed new rule provides for the recognition of high-performing schools and schools that have exited categories of improvement or intervention, and for the designation of schools as needing improvement or intervention. This rule complies with requirements for statewide accountability systems based on challenging academic standards for language arts and mathematics, and for school improvement designations and actions of the department as detailed by the state's system of annual meaningful differentiation and by the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA).

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 more detail on the changes between the proposed rule and the rule as adopted, reasons for changes, or information as to why the Department may not have accepted comments or suggested changes, please see "6.19.8 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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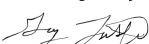
Title:

Assistant Secretary of Policy, Research and Technology

Signature: (BLACK ink only OR Digital Signature)

Date signed:

DocuSigned by:



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10/12/2023

Response to Public Comment
6.19.8 NMAC, School Differentiation and Support

RULE CHANGES	
Section	Change
6.19.8.10	<ul style="list-style-type: none">• Strike “address resource inequities or”
6.19.8.7(O)	<ul style="list-style-type: none">• After “defined in the ESSA plan” add “subject to a federally approved waiver”
6.19.8.12(D)	<ul style="list-style-type: none">• Strike Paragraph (1) and renumerate the following paragraph and subparagraphs as new paragraphs (1) through (3).
6.19.8.15(A)(4)	<ul style="list-style-type: none">• Strike “biannual”

Response to Public Comment
6.19.8 NMAC, School Differentiation and Support

Public Comment Period: August 15, 2023, to September 19, 2023.

The New Mexico Public Education Department (PED) received 5 public comments for this rule.

Response to Public Comment
6.19.8 NMAC, School Differentiation and Support

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Summary of Comments	PED Response
Concern about the clarity of communication with parents and community members about categories of school differentiation and the data contributing to school designations. Recommendation to use graphics and color that better represent the data on the NM Vistas portal to help communicate the categories. Advocating for consistent data sources across schools as part of the accountability model and NM Vistas reporting, for clear connection between the data model and the designations.	These recommendations relate to the design of the NM Vistas reporting portal and the state's ESSA Plan, which details the accountability model used to differentiate schools. The ESSA Plan will be responsive to community input and federal requirements. The comments do not relate directly to the proposed rule.
Recommendation to add simple terms and common language to the descriptions of school differentiation categories such as "turnaround, priority improvement, improvement, and on target." Concern that the labels "CSI" and "MRI" for schools in need of support and intervention are stigmatizing. Recognizing the need for the extra support that comes from these designations, recommendation for a new label for schools, such as SAM schools, that may consistently be designated as CSI and MRI due to the mission of the school to serve students who are not on track to graduate.	It is not clear which terms are being recommended for which categories of school differentiation. While the labels of TSI, ATSI, CSI, and MRI used in the proposed rule reference federal law directly, the state's ESSA Plan, accountability model, and communication with schools and communities may introduce simpler or less stigmatizing labels that align to these categories, as recommended.
Concern about the level of detail provided in the rule. The term "department guidance" is too vague for rule, may result in procedures that are not within the provisions of statute, and may result in inconsistencies of administration from year to year and from school to school.	The department's guidance on matters of school differentiation and support in this rule must follow applicable federal and state law and is supplementary to the rule language, often including things that are inappropriate to insert into administrative rule. The proposed rule refers to statute, federal law, and the state's ESSA plan, which must be approved by federal authorities. It would be unnecessary to further stipulate these parameters in rule.
Recommendation to strike the requirement to "address resource inequities" in Section 10.	This language from the Every Student Succeeds Act indeed may not apply to all the budget approval process for all schools' budgets and shall be stricken from the section.
Recommendation to remove from the list of possible oversight actions in Section 15 the requirement to use department-approved, high quality instructional materials.	It is within the scope of the rule and the authority of the department to count the use of department-approved, high-quality instructional materials among the best practices and evidence-based programs in Paragraph (1) of Subsection A of Section 15.

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Response to Public Comment

6.19.8 NMAC, School Differentiation and Support

Concern that the calculation of SAM school index scores be defined in rule to focus on 5- and 6-year graduation rates, not 4-year graduation rates, because the purpose of some SAM schools is to support graduation for students who are not on track to graduate.	Section 1111(c)(4)(B) of ESEA requires the state to apply all indicators to all public schools. Department communication about alternative schools may honor graduation achievements.
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