

This is a short-form amendment to 6.29.1 NMAC, Subsection M of Section 9, effective 5/24/2022.

**Explanatory Paragraph: Subsections A through L, and N through R were not shown as no changes were made to those subsections.**

**6.29.1.9 PROCEDURAL REQUIREMENTS:**

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**M.** Statewide student assessment system. As stated in Section 22-2-8.13 NMSA 1978, students' knowledge and skills are assessed and evaluated through the New Mexico content standards with benchmarks and performance standards, the system of assessments, and local measures.

**(1)** The statewide student assessment system. All public school students, with the exceptions indicated below, shall participate in the system of assessments, which includes standards-based assessments in grades 3 through 8 and high school.

**(2)** Exceptions. Exceptions include special provisions and requirements for the assessment of English language learners and students with IEPs.

**(a)** English language learners. Students who have limited English language skills (i.e., students who are "English language learners") as determined by the department-approved English language proficiency screening assessment shall participate in the statewide assessment program. The following considerations specify how assessment shall be conducted.

**(i)** Length of enrollment in U.S. schools. The options for participation of English language learners in the New Mexico standards-based assessment program depend on the length of time that the student has been enrolled in U.S. public schools. For students who are new to U.S. schools, the following applies: Students who are enrolled for the first year in a U.S. school may receive an exemption from the system of assessments for English language arts, including all subtests therein. In all other content areas of the system of assessments, the student shall participate in the Spanish-language version of the assessment (if available and appropriate) or in the English-language version with accommodations provided, if they are determined to be appropriate by the local school's team, as described in (iii) of Subparagraph (a) of Paragraph (2) of Subsection M of 6.29.1.9 NMAC. For the subtests other than reading, the test completion status shall be student tested all sessions, and the types of accommodations that are provided, if any, shall be indicated in the student information system. Students who have been in U.S. schools for at least 12 months and less than three consecutive years shall participate in the statewide assessment program in one of three ways: the student may participate in the standard administration of the English-language version of the assessment without accommodations; the student may participate in the English-language version of the assessment with appropriate accommodations; or the student may participate in the standard administration of the Spanish-language version of the assessment, where available and appropriate.

**(ii)** Waivers for home language assessment. Students who have been in U.S. schools for three or more consecutive years shall participate in the English-language version of the assessment with or without allowable accommodations, unless a request based on the determination of the local education agency to continue the testing of the student in the home language of Spanish and the request is approved by the secretary. If, after three consecutive years in U.S. schools, the district or charter school determines (on a case-by-case basis) that academic assessments in the student's home language of Spanish would yield more accurate and reliable information about the student's knowledge of a subject, the district or charter school may request a waiver from the secretary to continue to assess the student in the home language of Spanish. Approved waivers are effective for the current year only; annual waiver requests may be approved for a maximum of two years. The waiver request shall be submitted to the secretary for approval at least three months before the assessment, by the district's superintendent or the charter school administrator. The request shall include: student name, student state identification number, school in which the student is currently enrolled, student's grade level, student's most recent department-approved English language proficiency, assessment date and overall composite score, length of enrollment in U.S. schools, an indication of whether this is the first or second waiver request for the student, the reason or justification for the waiver request, and names of the school team members involved in the decision to request the waiver.

**(iii)** Accommodations. Districts and charter schools shall provide accommodations to English language learners after consideration of their appropriateness for the individual student.

To determine the appropriateness of allowing accommodations, the district or charter school shall consider the student's level of proficiency in all domains of language (listening, speaking, reading, writing and comprehension) and the nature of the school's instructional program. The district or charter school shall ensure that students do not receive accommodations without current justification supported by data. District and school staff may obtain the technical assistance on procedures for accommodations from the department's district test coordinator's manual or from the department. Each school shall utilize a team to review individual student progress in order to determine accommodations. For students being served on an individualized education program (IEP) or Section 504 Plan, those teams (IEP or Section 504) will respectively determine appropriate test accommodations. For all other students, the school may use its student assistance team (SAT) or form another school-based team for this purpose, but the team shall be comprised of at least three school staff, including staff who are familiar with the student's abilities and language needs, standardized test procedures and valid ELL test accommodations. Team members may include: the student's bilingual multicultural education- or TESOL-endorsed teacher, the bilingual multicultural education program coordinator, the student's other teacher(s), administrators or school test coordinators, or the school counselor. The student's parent or guardian, the student and other staff members may be also included, as appropriate. The team shall base its decisions about appropriate accommodations on the following: annual review of the student's progress in attaining English proficiency, student's current English language proficiency, including the student's experience and time in U. S. schools, student's expected date for exiting English language learner accommodations, student's familiarity with the accommodation under consideration, the primary language of instruction used in the content area to be assessed and the length of time that the student has received instruction in that language, and the student's grade level. Written documentation of accommodation decisions made by the team shall be stored in the student's cumulative file and shall be reported to the department's bureau of assessment and evaluation.

**(b)** Students with IEPs. Students with IEPs who receive special education and related services shall participate in all statewide and district-wide assessments of student achievement or in state-approved alternate assessments. Pursuant to Subsection E of 6.31.2.11 NMAC, 34 CFR 300.320 (a)(2)(ii) and 34 CFR 300.320(a)(6), the IEPs for such students shall specify which assessments each student will participate in and what, if any, accommodations or modifications in administration are needed to enable the student to participate. The IEPs for students who will not participate in a particular statewide or district-wide assessment shall meet state-approved criteria, methods and instruments.

**(c)** Waiver of the high school system of assessments (graduation requirement assessment).

**(i)** With the approval of the local board of education or charter school governing body, the local superintendent or charter school administrator may request written approval from the secretary to award a diploma to a student who has not passed the high school system of assessments. The district or charter school shall document student attainment of required competencies through an alternative assessment procedure and shall submit such a request using the department's *high school system of assessments waiver request* form. This form shall include: name of superintendent; district/school; mailing address; phone; fax; email address; name of a secondary contact person including the same information; date of submission; statement of applicable district or charter school policy, list of students for whom the waiver request is being made including: student name, school, date of board approval, and statement of whether or not competencies are documented through an alternative assessment; and rationale for request.

**(ii)** With appropriate documentation, a passing score on another state's graduation requirement assessment shall substitute for the high school system of assessments.

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[6.29.1.9 NMAC - Rp, 6.30.2.10 NMAC, 6/30/2009; A, 02/12/2010; A, 10/31/2011; A, 2/28/2017; A, 07/25/2017; A, 12/15/2020; A, 5/24/2022]