



STATE OF NEW MEXICO
PUBLIC EDUCATION DEPARTMENT
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SECRETARY DESIGNATE OF EDUCATION

MICHELLE LUJAN GRISHAM
GOVERNOR

February 10, 2020

Mr. Brian S. Colón
State Auditor
2540 Camino Edward Ortiz, Suite A
Santa Fe, NM 87507

Re: Response to Notice of Proposed Rulemaking Audit Rule (2.2.2 NMAC)

Dear Mr. Colón:

The New Mexico Public Education Department (PED) is providing a written response to the Notice of Proposed Rulemaking Audit Rule (2.2.2 NMAC).

The update in 2.2.2.9 (A)(5) strikes out the requirement for an IPA to notify the PED when an audit is going to be late. The deletion of this requirement will diminish PED's ability to be able to track and impose PED's statutory requirement to withhold State Equalization Guarantee (SEG) per NMSA 22-8-13.1

22-8-13.1. School district and charter school audits; sanctions for not submitting timely audit reports.

A. Each school district and charter school shall have an annual audit as required by the Audit Act [12-6-1 through 12-6-14 NMSA 1978] and rules of the state auditor that shall be completed and submitted to the state auditor by the date specified in rules of the state auditor. At the completion of the annual or any special audit, the school district or charter school shall submit a copy of the audit report to the department.

B. School districts and charter schools shall comply with due dates for annual audits specified by rule of the state auditor. Failure to submit a timely audit report shall subject a school district or charter school to progressive sanctions. A school district or charter school that does not submit an annual audit report:

(1) within ninety days from the due date, shall be required to submit monthly financial reports to the department until the department is satisfied that the school district or charter school is in compliance with all financial and audit requirements;

(2) after ninety days but within one hundred eighty days from the due date, may be withheld temporarily in an amount up to five percent of its current-year state equalization guarantee distribution;

(3) after one hundred eighty days but within two hundred seventy days, may be withheld temporarily in an amount up to seven percent of its current-year state equalization guarantee distribution and may be required to submit a corrective action plan to the secretary; and

(4) after two hundred seventy days, may be withheld temporarily in an amount up to seven percent of its current-year state equalization guarantee distribution and may be subject to the secretary's suspension of the local school board or governing body acting as a board of finance.

Additionally, a late audit is a financial warning indicator – not having the information timely, results in a decreased oversight capacity of a school district's finance and PED would be dependent on notification of late audits from the State Auditors office to enact provisions of statute requiring withholding of SEG for late audit reports. If the notification is late or missing, PED would not be able to meet its requirements under law.

Reconsideration regarding the proposed rule change is appreciated and will support the PED with ensuring school finances are monitored timely.

Respectfully,



Adán Delgado, Deputy Secretary Finance and Operations
Public Education Department

AD/ac

cc:

Elise Mignardot, Office of the State Auditor

David Craig, Public Education, Director of School Budget and Finance Division