

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 20 TRAFFIC SAFETY
PART 3 DRIVER EDUCATION SCHOOLS

18.20.3.1 ISSUING AGENCY: New Mexico Department of Transportation.
[18.20.3.1 NMAC - Rp, 18 NMAC 20.3.1, 1-1-03; A, 2-13-09]

18.20.3.2 SCOPE: This rule applies to all persons seeking to operate driver education schools, or serve as instructors for driver education courses offered, in New Mexico.
[18.20.3.2 NMAC - Rp, 18 NMAC 20.3.2, 1-1-03]

18.20.3.3 STATUTORY AUTHORITY: Sections 66-10-1 through 66-10-12 NMSA 1978.
[18.20.3.3 NMAC - Rp, 18 NMAC 20.3.3, 1-1-03]

18.20.3.4 DURATION: Permanent.
[18.20.3.4 NMAC - Rp, 18 NMAC 20.3.4, 1-1-03]

18.20.3.5 EFFECTIVE DATE: January 1, 2003, unless a later date is cited at the end of a section.
[18.20.3.5 NMAC - Rp, 18 NMAC 20.3.5, 1-1-03]

18.20.3.6 OBJECTIVE: The purpose of this rule is to provide minimum and uniform standards for the issuance, renewal, and revocation of driver education school licenses and driver education instructor certificates and to establish requirements for the operation of driver education schools.
[18.20.3.6 NMAC - Rp, 18 NMAC 20.3.6, 1-1-03]

18.20.3.7 DEFINITIONS: For use in this part, the following definitions apply:

- A. ADA** means the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.;
- B. bureau** means the traffic safety bureau (TSB) of the New Mexico department of transportation;
- C. behind-the-wheel** means instruction in which the student, under the direct guidance of a certified driver education instructor, is in control of a motor vehicle, and includes on-street training, on-range training or use of a driving simulator, only as provided by these rules;
- D. certificate** means a document issued by the bureau authorizing a person to serve as a driver education school instructor;
- E. certificate of attendance** means a document evidencing that a person has completed a driver education instructor training course or recertification driver education instructor training course conducted by the bureau;
- F. certificate of completion** means an official document purchased from the bureau and issued to the student upon successful completion of a driver education course;
- G. clean driving record** means a person has no more than six (6) points on that person's driver's license, and that person has not within the last ten (10) years had a driver's license suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or been convicted in any jurisdiction of an alcohol or drug-related driving offense, or has received three (3) or more failure to appear summonses or citations in the past year;
- H. convicted or conviction** has the meaning given in Section 66-8-102 NMSA 1978.
- I. correspondence course** means a driver education course approved by the bureau in which a student, overseen by a parent, legal guardian or supervising adult, independently studies written materials and submits written assignments for review by a driver education instructor, and shall not include on-line courses;
- J. credit hour** means fifty (50) minutes of instruction and ten (10) minutes of break time;
- K. crime involving moral turpitude** means a crime that is contrary to honesty, justice or good morals, such as a crime involving dishonesty, fraud, perjury, forgery, murder or serious sexual offenses;
- L. curriculum** means a course of instruction approved by the bureau pursuant to Section 66-10-1 et seq. NMSA 1978;
- M. designee** means a person authorized to perform certain specified duties on behalf of the bureau;
- N. disabled** means a person who is disabled under the provisions of the ADA, and whose disability substantially limits the person's ability to learn and implement the driver education curriculum;

- O. driver education course or course** means a driver education curriculum taught by a driver education instructor and includes correspondence courses, classroom instruction and behind-the-wheel training;
- P. driver education school or school or licensee** means a person licensed by the bureau to operate a school offering driver education courses;
- Q. driver education instructor or instructor** means a person certified by the bureau as qualified and trained to conduct driver education courses, who gives instruction for hire in the driving of motor vehicles or prepares applicants for examination for a Class D, E or M driver's license;
- R. driving simulator** means a computer-based simulator unit and program, approved by the bureau, that reproduces driving situations likely to occur in actual driving performance on the street which require the student to evaluate risk, make decisions, and respond appropriately to the driving situation presented;
- S. educational institution** means any public, private or parochial school that provides basic education at the mid school, junior high school or high school level;
- T. enrolled** means that a student has registered for a driver education course, attended the first day of a scheduled course and will continue until the course is completed;
- U. extension site** means a location other than the main school site where a licensed driver education school offers driver education courses;
- V. Implied Consent Act** means Sections 66-8-105 through 66-8-112 NMSA 1978;
- W. limited driving history** means a driving record from the New Mexico motor vehicle division of the taxation and revenue department or its equivalent that includes actions and citations, and driver's license revocations pursuant to the Implied Consent Act;
- X. license** means the document issued by the bureau authorizing a person to operate a driver education school;
- Y. MVD** means the New Mexico motor vehicle division of the taxation and revenue department;
- Z. on-range training** means a student is in control of a motor vehicle on an off-street facility where one or more students may be operating a motor vehicle simultaneously under the direction of one or more instructors who are outside the vehicle;
- AA. on-street training** means a student is in control of a motor vehicle on a public highway in real and varied traffic situations and an instructor is in the front passenger seat next to the student;
- BB. person** means an individual, firm, partnership, association, corporation, or other legal entity;
- CC. private driver education school** means a person to whom the Driving School Licensing Act, Section 66-10-8 NMSA 1978, applies;
- DD. proctored exam** means an exam monitored by a driver education instructor;
- EE. revocation or revoked** means the involuntary permanent termination of a license or certificate by the bureau for cause;
- F. student** means a person who has enrolled in a driver education course; and
- GG. suspension or suspended** means the involuntary termination of a license or certificate by the bureau for cause for a specified period of time.

[18.20.3.7 NMAC - Rp, 18 NMAC 20.3.7, 1-1-03; A, 2-13-09]

18.20.3.8 STUDENT ELIGIBILITY:

- A. Driver education schools.** A driver education school shall not enroll a person as a student unless the person will be fifteen (15) years of age on or before the date the classroom portion of the driver education course will be completed.
- B. Correspondence courses.** A correspondence course shall not enroll a person as a student unless:
 - (1) the person will be fifteen (15) years of age on or before the date the correspondence course will be completed; or
 - (2) the person has obtained prior written approval from the bureau; in order to obtain prior written approval from the bureau, the person shall:
 - (a) submit an application for permission to enroll in a driver education correspondence school, completed and signed by the person's parents or legal guardian; a person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us>;
 - (b) document in the completed application that the person meets at least one (1) of the following criteria, subject to the bureau's approval:
 - (i) availability: the parent or legal guardian shall provide documentation that there is not a driver education program at the person's mid school, junior high school or high school, or that there are no private

driver education programs available within a reasonable distance;

(ii) distance: the parent or legal guardian shall provide documentation that there is not a private driver education school within twenty-five (25) miles of the person's home and that the person's mid school, junior high school or high school does not provide a driver education course;

(iii) schedule: the parent or legal guardian shall provide documentation that the person's scholastic, activity or work schedule prevents the person from attending either a mid school, junior high school or high school driver education school or a local private driver education school;

(iv) home schooling: the parent or legal guardian shall provide verification of notification to the New Mexico public education department of the intent to home school the person in all subjects; or

(v) extenuating circumstances: the parent or legal guardian shall provide documentation of any other extenuating circumstance that prevents the person from attending either a mid school, junior high school or high school driver education school or a local private driver education school.

[18.20.3.8 NMAC - N, 1-1-03; A, 2-13-09]

18.20.3.9 APPLICATION FOR PRIVATE DRIVER EDUCATION SCHOOL LICENSE:

A. License required. No person may operate a driver education school without first having obtained a license from the bureau.

B. Application form. A person wishing to obtain a license to operate a private driver education school shall file an application with the bureau. A person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

C. Contents of application. An application for a private driver education school license shall contain:

(1) the applicant's name, mailing address, telephone number, physical address of the main school site, and, if the applicant has one, the applicant's e-mail address;

(2) a photocopy of the certificate of maximum occupant load issued by the state or local fire marshal stating the maximum occupancy allowed by the fire code for each room at the main school site and each extension site, if applicable, that will be used as a classroom;

(3) a list of all extension sites to be used for conducting driver education courses;

(4) a list of all instructors who will conduct driver education courses;

(5) a schedule of fees applicable to students who enroll in a driver education course, including primary and incidental costs charged for the course, school policies for passing and failing, refund and reschedule policies, attendance requirements and MVD permit fees;

(6) the proposed curriculum, handouts, videos, and final examination questions for the driver education course;

(7) the name, address, and telephone number of three (3) character and employment references who are not family members;

(8) the applicant's resume or related work history;

(9) a copy of the applicant's limited driving history from the motor vehicle division, driver services bureau or its equivalent from any jurisdiction in which the applicant has held a driver's license in the past ten (10) years dated no earlier than sixty (60) days before the date the application is filed with the bureau; and

(10) a state police background check from any state in which the applicant has resided in the past ten (10) years dated no earlier than sixty (60) days before the date the application is filed with the bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety or its equivalent at least sixty (60) days before the date the application is filed with the bureau.

D. Completeness. When the bureau receives an application for a driver education school license, the bureau shall check the application for completeness.

(1) If the application is not complete, the bureau shall contact the applicant for additional information within fifteen (15) days of receipt. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the applicant's file shall be closed and the application shall be returned to the applicant.

(2) If the application is complete, the bureau shall review the application.

[18.20.3.9 NMAC - Rp, 18 NMAC 20.3.8, 1-1-03; A, 2-13-09]

18.20.3.10 ISSUANCE OF INITIAL PRIVATE DRIVER EDUCATION SCHOOL LICENSE:

A. Standards for issuance. In reviewing applications for driver education schools, the bureau shall consider whether:

- (1) the information provided by the applicant is accurate and valid;
- (2) the character and employment references provided by the applicant report that the applicant is fit to operate a driver education school;
- (3) the proposed driver education school can certify that its facilities meet the accessibility requirements of the ADA;
- (4) the applicant has not been convicted of a crime involving moral turpitude;
- (5) the applicant has a clean driving record;
- (6) the applicant's name does not appear on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 or any rule implementing that act; and
- (7) the persons who will serve as driver education instructors meet the requirements of this rule.

B. Issuance of initial license. If the bureau determines that an applicant meets the standards prescribed in Subsection A of this section, the bureau shall issue a license upon:

- (1) payment of the \$400.00 license fee (or \$200.00 for applications filed on or after January 1 of the current license year);
- (2) payment of the \$35.00 extension site fee for each extension site, if applicable;
- (3) submittal of a certificate of insurance that meets the requirements of Subsection D of 18.20.3.13 NMAC for each vehicle used for driver training; and
- (4) posting of a surety bond with the bureau in the amount of \$5,000 issued by a company authorized to transact surety business in New Mexico. The surety bond shall be continuous, shall name the New Mexico department of transportation, traffic safety bureau as obligee, and shall assure the satisfactory performance of all contracts with students, including tuition refund agreements, and the maintenance of student records.

C. Denial of license. If the bureau determines that an applicant does not meet the standards prescribed in Subsection A of this section, the bureau shall issue a letter stating the reasons for denial of the license. A person may reapply for a license at any time.

[18.20.3.10 NMAC - Rp, 18 NMAC 20.3.9 and 20.3.16, 1-1-03; A, 2-13-09]

18.20.3.11 TERM OF PRIVATE DRIVER EDUCATION SCHOOL LICENSE:

A. Term. A license shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial licenses shall be valid from the date of issuance to the next June 30. Renewal licenses shall be valid from July 1 of the year of renewal to June 30 of the following year.

B. License renewal.

- (1) A licensee shall file an application for renewal of its license with the bureau on or before June 1 of each year to ensure license renewal by July 1. A licensee who files an application for renewal after June 1 shall pay a late fee of \$25.00.
- (2) A person may obtain an application for renewal by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".
- (3) The application for renewal shall be accompanied by the documents specified in Subsection C of 18.20.3.9 NMAC, except for the documents specified in Paragraphs (7) and (8) of Subsection C of 18.20.3.9 NMAC.
- (4) The bureau shall review applications for renewal in the order in which they are received.

C. Approval/disapproval of application for license renewal.

- (1) The bureau shall renew a license for a period of one (1) year if:
 - (a) the bureau or its designee finds that the driver education school is in compliance with the requirements of this rule;
 - (b) the licensee has submitted all required reports to the bureau;
 - (c) the licensee has submitted a certificate of insurance that meets the requirements of Subsection D of 18.20.3.13 NMAC for each vehicle used for driver training;
 - (d) the licensee has submitted a continuation certificate or proof of payment for the surety bond required by Paragraph (4) of Subsection B of 18.20.3.10 NMAC; and
 - (e) the licensee pays the \$400.00 annual license fee and, if applicable, the \$35.00 extension site fee for each extension site and the \$25.00 late fee if the application was filed after June 1.
- (2) The bureau shall not renew the license of any driver education school not in compliance with the

requirements of this rule.

D. Notice of rule violation. The bureau may send any licensee a notice of rule violation if it finds that the driver education school is not in compliance with one or more requirements of this rule. The notice of rule violation shall specify the provisions of this rule with which the licensee is not in compliance. Failure to correct the rule violation in the time requested by the bureau may result in suspension or revocation of the license.

E. Early termination.

- (1) A license shall automatically terminate if a driver education school ceases operation.
- (2) The bureau may suspend or revoke a license for cause as provided in this rule.
- (3) If a driver education school ceases operation for any reason, the school shall comply with the requirements of Subsection M of 18.20.3.15 NMAC.

F. Restriction on sale of license. A driver education school license shall not be sold or transferred. [18.20.3.11 NMAC - Rp, 18 NMAC 20.3.10 and 20.3.16, 1-1-03; A, 2-13-09]

18.20.3.12 CLASSROOM COURSE REQUIREMENTS FOR PRIVATE DRIVER EDUCATION SCHOOLS: A licensee providing classroom instruction shall:

A. engage as driver education instructors only those persons who have been certified by the bureau; a licensee may not serve as an instructor unless the licensee has been certified by the bureau as an instructor pursuant to these rules.

B. enroll no more than forty (40) students or the maximum occupancy allowed by the fire code, whichever is less, in a driver education course;

C. not charge a student more than \$800.00, including tax, for enrolling in a driver education course, except that a school may charge a student up to \$100.00 for each credit hour of behind-the-wheel instruction that is not part of the seven (7) hour behind-the-wheel portion of a curriculum;

D. display the license issued by the bureau in an appropriate and visible location;

E. display the placard issued by the fire marshal stating the maximum occupancy of each classroom in an appropriate and visible location in the classroom;

F. use classroom facilities that:

- (1) have adequate space, lighting, heating, and ventilation;
- (2) have seats and tables or seats with attached tables for each student in the class;
- (3) have a whiteboard, blackboard, or flipchart;
- (4) have a monitor of sufficient size for all students to see, if videos are used; and
- (5) comply with all federal, state, and local laws relating to persons with disabilities, public health, safety, and sanitation, including restroom facilities;

G. ensure that the learning environment is conducive to learning and free from discrimination, intimidation, and harassment; no person shall engage in, or be permitted to engage in, conduct that is offensive to the ordinary dignity, decency, and morality of others;

H. use only the curriculum, handouts, videos, and final examination questions approved by the bureau;

I. if a licensee becomes aware that a student is disabled, inquire as to the need for accommodations, and provide reasonable accommodations for the student, including but not limited to auxiliary aids or services such as assisted listening devices or a sign language interpreter, unless the accommodation presents an undue burden on the licensee; the bureau shall pay for sign language interpretation if the student is under the age of eighteen (18), provided that the licensee shall contact the bureau at least fourteen (14) days before the scheduled date of the driver education course to arrange for interpretation;

J. provide a minimum of thirty (30) credit hours of classroom instruction for each driver education course if the course also includes a minimum of seven (7) hours of behind-the-wheel training, or fifty-six (56) credit hours of classroom instruction for each driver education course if the course does not include the minimum hours of behind-the-wheel training; in addition to the foregoing, either course must include a minimum of six (6) hours of classroom instruction devoted to DWI prevention and education and other impairments and distractions and shall include information on organ donation and the Jonathan Spradling Revised Uniform Anatomical Gifts Act, Sections 24-6B-1 et seq. NMSA 1978;

(1) when an educational institution is in session, a licensee shall conduct the course over a minimum four week period, with no more than three (3) hours of classroom instruction on days when educational institution classes are held, and no more than four (4) hours of classroom instruction on days when educational institution classes are not held;

(2) during any educational institution vacation or break period of two (2) weeks or more, a licensee may conduct the course over a minimum two (2) week period, with no more than four (4) hours per day of classroom instruction;

K. have a proctored final exam with a minimum of fifty (50) questions; a student must correctly answer at least seventy percent (70%) of the questions to pass the final exam; the exam shall require students to list, define, describe, identify, demonstrate, explain, compare, predict, estimate, or solve driving-related terms, signs, and situations;

L. use completion certificates purchased from the bureau at a cost of \$1.00 per certificate, issued sequentially by the licensee;

M. not permit a student to attend any driver education classes until the student has received written information stating all fees, including primary and incidental costs charged for the course, school policies for passing and failing, refund and reschedule policies and attendance requirements.

[18.20.3.12 NMAC - Rp, 18 NMAC 20.3.11 and 20.3.16, 1-1-03; A, 2-13-09]

18.20.3.13 BEHIND-THE-WHEEL TRAINING:

A. Hours requirement.

(1) A private driver education school which provides behind-the-wheel training as part of the course shall provide a minimum of seven (7) hours of behind-the-wheel training to each student, with no more than thirty (30) days between the end of the classroom course and the beginning of the behind-the-wheel training. At least four (4) of the seven (7) hours shall be on-street training.

(2) A private driver education school may meet up to three (3) hours of the behind-the-wheel training requirement:

(a) with on-range training; or

(b) with prior written approval from the bureau, by using a driving simulator approved by the bureau, provided that two (2) hours of instruction using a driving simulator shall be equivalent to one (1) hour of on-street training.

(3) On days when educational institution classes are held, a licensee shall provide no more than one (1) hour per day of behind-the-wheel training per student. On days when educational institution classes are not held, a licensee shall provide no more than two (2) hours per day of behind-the-wheel training per student.

(4) Driving time shall not include time spent driving to pick up or drop off students unless the route meets the objective of the driving lesson.

B. Pre-driving classroom instruction. Before a licensee schedules students for on-street training, the licensee shall provide a minimum of nine (9) hours of classroom instruction on:

(1) approaching the vehicle with awareness;

(2) orientation to controls;

(3) basic rules of the road;

(4) use of vision to control the vehicle;

(5) proper use of the steering wheel, accelerator, and brake;

(6) turning left and right; and

(7) signs, signals, and road markings.

C. Hourly behind-the-wheel course. A school may offer hourly behind-the-wheel training to any student requesting such training up to the maximum rate provided in Subsection C of 18.20.3.12 NMAC, provided that the requirements of Subsections C, D, E, F and G of this section shall apply.

D. Vehicle insurance required. A licensee shall provide to the bureau a certificate of insurance showing the issuance of an insurance policy with the required uniform endorsement by a company authorized to transact insurance business in New Mexico evidencing bodily injury and public liability insurance on all vehicles used for behind-the-wheel driving instruction, pursuant to Section 66-10-3 NMSA 1978, including hired vehicles and non-owned vehicles. The certificate shall list the make, model, and year of each vehicle and shall include a statement from the insurance company that it will notify the bureau thirty (30) days before canceling the insurance. The licensee shall provide a copy of the policy to the bureau upon the bureau's request. The insurance shall have the following minimum limits of coverage:

(1) \$500,000 per occurrence for bodily injury to or death of all persons injured or killed;

(2) \$250,000 per person for bodily injury to or death of a person injured or killed;

(3) \$10,000 per person for medical payments;

(4) \$100,000 per occurrence for property damage; and

(5) \$50,000 per person for uninsured motorist coverage.

E. Other requirements.

(1) The number of occupants in a motor vehicle being used for behind-the-wheel instruction shall not exceed the number of operational seatbelts in the vehicle. Only the instructor, bureau monitor and driver education student may occupy the front seat. Only a student, parent or guardian of a student, instructor, translator, licensee, bureau monitor or person training to become a driver education instructor may occupy a rear seat.

(2) A private driver education school shall maintain a driving log for each student. The driving log shall be maintained in the vehicle during the training and shall be completed at the end of each training. The driving log shall include the student's name, permit number, home telephone number, the name and telephone number of an emergency contact person, the instructor's name, the date and start and end time of each drive, the skills taught that day, the instructor remarks, the student's final behind-the-wheel grade, total driving time for the student, and the student's initials indicating that the student has reviewed the information in the log.

(3) No instructor or student shall use a cell phone during behind-the-wheel training except in an emergency, unless otherwise restricted by law or local ordinance.

(4) The instructor shall ensure that each student participating in behind-the-wheel training has in his or her immediate possession an instructional permit or provisional license issued by the New Mexico motor vehicle division or driver's license from any state before the student may participate in behind-the-wheel training.

F. Disabled and other students in need of specialized instruction or equipment.

(1) When providing behind-the-wheel driving instruction to disabled students and other students in need of specialized instruction or equipment, a private driver education school shall provide individualized instruction for each student based on the nature and severity of the student's disability or special needs.

(2) When providing behind-the-wheel driving instruction to disabled students and other students in need of specialized instruction or equipment, a private driver education school shall:

(a) determine whether the driver education school can provide a reasonable accommodation for the disabled student or the specialized instruction or equipment required by a non-disabled student; and

(b) if the driver education school cannot provide a reasonable accommodation or specialized instruction or equipment, refer the student to an instructor certified by the bureau who also holds the certified driver rehabilitation specialist (CDRS) credential from the association of driver rehabilitation specialists, or an equivalent credential from an organization recognized by the bureau, unless the driver education school currently has a CDRS instructor in its employ.

G. Car and equipment specifications. A private driver education school shall maintain all motor vehicles it uses for behind-the-wheel training in safe operating condition and shall equip them with the following:

(1) a passenger side brake (on-street training only) ;

(2) right and left side mirrors;

(3) an inside rear view mirror for the instructor;

(4) operational seatbelts for all occupants;

(5) adjustable front seats;

(6) a first aid kit;

(7) safe tires; and

(8) signs on both sides and on the rear of the vehicle indicating the name of the driver education school, "student driver" or "driver education vehicle;" the background and letters of the sign shall be in contrasting colors, the letters shall be at least three inches (3") high, and the sign shall be safely secured to the vehicle, but shall not be placed on any window of the vehicle.

H. Reports of moving violations and crashes. A private driver education school shall report to the bureau:

(1) within twenty-four (24) hours of the occurrence, all crashes that result in injury or death that involve students driving driver education school vehicles;

(2) within ten (10) working days of their occurrence, all other crashes and all moving violations that involve students driving driver education school vehicles; and

(3) the date, time, location, names of all persons involved, name of law enforcement agency and officer handling the investigation for each crash or moving violation.

[18.20.3.13 NMAC - Rp, 18 NMAC 20.3.11, 1-1-03; A, 2-13-09]

18.20.3.14 CORRESPONDENCE COURSE REQUIREMENTS. A licensee offering correspondence courses shall:

- A.** enroll only those New Mexico students who are eligible pursuant to Subsection B of 18.20.3.8 NMAC and ensure that distributors of the school's correspondence course adhere to the same enrollment requirements;
 - B.** use only the curriculum, handouts, videos, and final exam questions approved by the bureau; such materials must include a notification that any student using the materials must be home-schooled or have bureau approval pursuant to Subsection B of 18.20.3.8 NMAC before starting the course, and that such course cannot be taken on-line;
 - C.** provide a minimum of fifty-six (56) hours of coursework, based on an average person completion time, including a minimum of six (6) hours of coursework devoted to DWI prevention and education and information on organ donation and the Jonathan Spradling Revised Uniform Anatomical Gifts Act, Sections 24-6B-1 et seq. NMSA 1978;
 - D.** have a final exam with a minimum of fifty (50) questions; a student must correctly answer at least seventy percent (70%) of the questions to pass the final exam;
 - E.** use completion certificates purchased from the bureau at a cost of \$1.00 per certificate, issued sequentially by the licensee;
 - F.** specify at least one (1) representative to act as liaison with the bureau;
 - G.** specify at least one (1) certified driver education instructor to review each student's work and progress;
 - H.** engage as driver education instructors only those persons who have been certified by the bureau; a licensee shall not serve as an instructor unless the licensee has been certified by the bureau as an instructor pursuant to these rules;
 - I.** inform each student in writing that the student shall have one (1) year from the date of enrollment to complete the course and ensure that this requirement is met;
 - J.** not charge a student more than \$400, including tax, for enrolling in a correspondence course.
- [18.20.3.14 NMAC - N, 1-1-03; A, 2-13-09]

18.20.3.15 OPERATING REQUIREMENTS FOR PRIVATE DRIVER EDUCATION SCHOOLS: A licensee:

- A.** shall adhere strictly to the requirements of this rule;
- B.** shall notify the bureau at least thirty (30) days in advance if the driver education school intends to cease operations;
- C.** shall make all driver education school records available for inspection and copying by the bureau or its designee at any time; a licensee shall maintain all hard copies and electronic versions of its records for a minimum of three (3) years for each student receiving instruction, including students who passed, failed, withdrew, cancelled, or transferred to another school; the records shall be updated for each course;
- D.** shall, at the time of enrollment and on a quarterly basis thereafter, provide the bureau with a student report for each driver education course conducted and completed during the quarter on a form prepared or approved by the bureau;
- E.** shall have a written refund policy and a written reschedule policy which must be issued to each student upon enrollment;
- F.** shall, upon request, provide each student with a form prepared by the bureau that allows the student or the student's parent to notify the bureau regarding a comment or concern about the school or an instructor;
- G.** shall provide each student upon enrollment with a copy of the graduated driver's license act, Sections 66-5-5 and 66-5-8 NMSA 1978 regarding the practice driving component requirement;
- H.** shall notify the bureau of:
 - (1) any changes in address ten (10) days before opening for business at the new location;
 - (2) the addition or closing of extension sites within ten (10) days of their opening or closing; and
 - (3) the addition or deletion of instructors within ten (10) days of their hiring or leaving;
- I.** shall conduct all school operations in a professional and courteous manner;
- J.** shall operate all extension sites under the name used for the main school site and be accountable for all extension site operations;
- K.** shall not publish, advertise, or insinuate in any way that a student is assured of obtaining a driver's license if the student takes the course offered by the licensee;
- L.** may use the phrases "licensed by the traffic safety bureau" or "curriculum approved by the traffic safety bureau" but may not otherwise use the word "approved" or any of its synonyms in its advertising or

promotional materials;

M. upon ceasing operations for any reason, shall make all driver education school records available for inspection or copying by the bureau or its designee at any time, and shall return all unused completion certificates to the bureau within ten (10) days of the school ceasing operation; the school shall be entitled to a refund of \$1.00 for each unused certificate if requested in writing by the school when it returns the unused certificates; for any certificates not returned within ten (10) days of the school ceasing operation, the bureau shall notify MVD that the certificates are no longer valid.

[18.20.3.15 NMAC - Rp, 18 NMAC 20.3.11, 1-1-03; A, 2-13-09]

18.20.3.16 EVALUATION OF PRIVATE DRIVER EDUCATION SCHOOLS:

A. Responsibility. The bureau or its designee:

(1) shall conduct periodic evaluations of driver education schools using criteria developed by the bureau; the bureau shall prepare a written evaluation and shall provide a copy of the evaluation to the licensee upon request; the bureau may in its discretion conduct evaluations of a driver education school on its own initiative at any time and for any reason or in response to complaints from any person; the bureau shall document, investigate, and discuss all complaints with the driver education school;

(2) may conduct on-site quality assurance visits; on-site visits may address the adequacy of classroom facilities, instructor's traffic safety knowledge and teaching techniques, learning environment, quality of the curriculum, class materials, examination questions and customer service.

B. Relevant factors. In conducting its evaluations, the bureau shall consider:

(1) the number and nature of any comments or complaints received from students, instructors, judges, law enforcement officers, and others;

(2) whether the driver education school consistently meets the requirements of this rule; and

(3) the results from on-site quality assurance visits.

[18.20.3.16 NMAC - Rp, 18 NMAC 20.3.12, 1-1-03; A, 2-13-09]

18.20.3.17 CERTIFICATION OF MID SCHOOL, JUNIOR HIGH SCHOOL AND HIGH SCHOOL DRIVER EDUCATION INSTRUCTORS:

A. Certification required. No teacher may serve as a driver education instructor in [a school] an educational institution without first having obtained a certificate from the bureau. The bureau may in its discretion temporarily waive this requirement upon request of the educational institution principal or superintendent, contingent on the teacher attending a driver education instructor training course offered by the bureau within twelve (12) months of the date of the waiver. A teacher certified pursuant to this section shall not be certified to teach driver education in a private driver education school unless the teacher obtains instructor certification pursuant to 18.20.3.18 NMAC.

B. Application requirements. A mid school, junior high school or high school teacher wishing to obtain approval from the bureau to teach driver education at an educational institution shall file an application with the bureau. A person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

C. Contents of application. The application shall be accompanied by:

(1) the name of the teacher;

(2) a copy of the teacher's state board of education teaching license or waiver to teach pending licensure or if a private educational institution, a statement from the institution's principal stating that the teacher is qualified to teach;

(3) a copy of the teacher's limited history driving record from the motor vehicle division, driver services bureau dated no earlier than sixty (60) days before the date the letter is filed with the bureau;

(4) the date the teacher will attend the bureau's driver education instructor training course; and

(5) the name of the school at which the teacher will be providing driver education instruction.

D. Completeness. When the bureau receives an application for certification as a driver education instructor, the bureau will check the application for completeness.

(1) If the application is incomplete, the bureau shall contact the applicant for additional information within fifteen (15) days of receipt. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the applicant's file shall be closed and the application shall be returned to the applicant.

(2) If the application is complete, the bureau shall review the application.

E. Standards for issuance of driver education instructor certificate. Prior to approving the teacher to attend training, the bureau shall consider whether:

- (1) the information provided is accurate and valid;
- (2) the teacher is at least twenty-one (21) years of age;
- (3) the teacher holds a valid driver's license; and
- (4) the teacher has a clean driving record which is free of any DWI conviction for the past five (5) years.

F. Approval for training. If the bureau determines that the teacher meets the standards in Subsection E of this section, the bureau shall grant approval for the teacher to attend the bureau's forty (40) hour driver education instructor training course.

G. Term of certification. A certificate of attendance from the classroom portion of the bureau's driver education instructor training course shall certify the teacher to teach in a mid school, junior high school or high school for three (3) years from the date of completion of training. If the mid school, junior high school or high school at which the teacher is teaching changes during the term of the certificate, the teacher shall notify the bureau within ten (10) days of such change.

H. Renewal of certification. A teacher may renew the teacher's certification to teach driver education in a school by taking the refresher driver education instructor training course before the teacher's diploma expires. A certificate of attendance from the bureau's refresher driver education instructor training course shall certify the teacher to teach in a mid school, junior high or high school for three (3) years from the date of completion of refresher training. If the teacher does not complete the refresher driver education instructor training course within the three (3) year period, the teacher's certification will lapse. A teacher teaching in a public educational institution shall provide the bureau with a copy of the teacher's current New Mexico public education department teaching license prior to the end of the three (3) year period.

[18.20.3.17 NMAC - N, 1-1-03; A, 2-13-09]

18.20.3.18 CERTIFICATION OF PRIVATE DRIVER EDUCATION INSTRUCTORS:

A. Certification required. No person or licensee may serve as a driver education instructor without first having obtained a certificate from the bureau.

B. Application requirements. A person wishing to obtain a certificate as a driver education instructor shall file an application with the bureau. A person may obtain an application by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

C. Contents of application. The application shall be accompanied by:

(1) a copy of the applicant's limited history driving record from the motor vehicle division, driver services bureau or its equivalent from any state in which the applicant has resided in the past ten (10) years dated no earlier than sixty (60) days before the date the application is filed with the bureau;

(2) a state police background check from any state in which the applicant has held a driver's license in the past ten (10) years dated no earlier than sixty (60) days before the date the application is filed with the bureau, or verification that the applicant submitted a request for a state police background check to the department of public safety or its equivalent at least sixty (60) days before the date the application is filed with the bureau;

(3) a copy of the applicant's health certificate signed by a physician and dated no earlier than sixty (60) days before the date the application is filed with the bureau stating that the applicant is free from all communicable diseases; if the applicant will provide behind-the-wheel training, the health certificate must also state that the applicant is free of any ailment, disease, or physical defect that causes momentary or prolonged lapses of consciousness or control, which is or may become chronic, and that the applicant is not suffering from a physical or mental disability or disease that prevents reasonable and ordinary control over a motor vehicle or that could impair the applicant's ability to drive safely or instruct student drivers; correspondence school instructor applicants do not need to submit a health certificate;

(4) a copy of a teaching certificate from the New Mexico public education department, a copy of a diploma or official transcript evidencing a bachelor's degree from an accredited college or university, or a resume with verifiable employment history showing a minimum of three (3) years of full-time experience in driver training or a related field;

(5) the name, address, and telephone number of three (3) character and employment references who are not family members;

(6) the applicant's resume or related work history; and

(7) the name of the school at which the instructor will be providing driver education instruction.

D. Completeness. When the bureau receives an application for certification as a driver education instructor, the bureau shall check the application for completeness.

(1) If the application is incomplete, the bureau shall contact the applicant for additional information within fifteen (15) days of receipt. The applicant shall then have thirty (30) days from the date of contact to complete the application. If the applicant fails to complete the application within the thirty (30) days, the applicant's file shall be closed and the application shall be returned to the applicant.

(2) If the application is complete, the bureau shall review the application.

E. Standards for issuance of driver education instructor certificate. In reviewing applications for driver education instructors, the bureau shall consider whether:

(1) the information provided is accurate and valid;

(2) the character and employment references provided by the applicant report that the applicant is fit to be a driver education instructor;

(3) the applicant is at least twenty-one (21) years of age;

(4) the applicant has a bachelor's degree from an accredited college or university, has a license as a teacher from the New Mexico public education department, or has a minimum of three (3) years of full-time experience in driver training or a related field;

(5) the applicant holds a valid driver's license;

(6) the applicant has not been convicted of a crime involving moral turpitude;

(7) the applicant has a clean driving record; and

(8) the applicant's name does not appear on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 or any rule implementing that act.

F. Approval for training.

(1) If the bureau determines that the applicant meets the standards in Subsection E of this section, the bureau shall grant approval to proceed with instructor training.

(a) Each applicant shall complete a forty (40) hour bureau-sponsored driver education instructor training course.

(b) If the applicant is not a licensed teacher, does not hold an advanced degree in education, or does not have proof of having taken an equivalent training course in the past three (3) years, the applicant must complete a bureau sponsored or approved instructor training course designed to teach instructional strategies, classroom management, or acquisition of teaching competencies.

(c) The bureau shall issue a certificate of attendance upon satisfactory completion of the driver education instructor training course, which shall be valid for five (5) years from the date of completion.

(2) If the bureau determines that the applicant does not meet the standards in Subsection E of this section, the bureau shall issue a letter stating the reasons it is not granting approval to proceed with instructor training.

G. Final review.

(1) If the bureau determines that an applicant has successfully completed the driver education instructor training course and is otherwise fit, the bureau shall issue a certificate upon payment of the \$50.00 instructor certification fee. The bureau may in its discretion issue a temporary certificate to an applicant with either a minimum of a bachelor's degree or three (3) years of related experience, contingent on the applicant attending the next driver education instructor training course offered by the bureau.

(2) If the bureau determines that an applicant has not successfully completed the driver education instructor training course or is otherwise not fit, the bureau shall issue a letter stating its reasons for denial of certification.

H. Term. A driver education instructor certificate shall be valid until June 30 of each year, unless suspended or revoked for cause before that date. Initial certificates shall be valid from the date of issuance to the next June 30. Renewal certificates shall be valid from July 1 of the year of renewal to June 30 of the following year. If the driver education school at which the instructor is teaching changes during the term of the certificate, the instructor shall notify the bureau within ten (10) days of such change.

[18.20.3.18 NMAC - Rp, 18 NMAC 20.3.13, 20.3.14, 20.3.15 and 20.3.16, 1-1-03; A, 2-13-09]

18.20.3.19 RECERTIFICATION OF PRIVATE DRIVER EDUCATION INSTRUCTORS:

A. Certificate renewal.

(1) A driver education instructor shall file an application for renewal of his or her certificate with the

bureau on or before June 1 each year to ensure certificate renewal by July 1. A driver education instructor who files an application for renewal after June 1 shall pay a late fee of \$25.00.

(2) A person may obtain an application for renewal by contacting the bureau at 1-800-541-7952 or accessing the bureau's website at <http://www.nmshtd.state.nm.us> and clicking on "traffic safety".

(3) The application for renewal shall be accompanied by the documents specified in Subsection C of 18.20.3.18 NMAC, except for the documents specified in Paragraphs (5) and (6) of Subsection C of 18.20.3.18 NMAC.

(4) The bureau shall review applications for renewal in the order in which they are received.

B. Continuing education requirements.

(1) Driver education instructors shall complete a minimum of eight (8) credit hours of continuing education each year to qualify for recertification.

(2) A driver education instructor may satisfy this requirement in whole or in part by attending bureau sponsored:

(a) traffic safety issues forums and workshops; and

(b) education courses and workshops.

(3) The bureau may, in its discretion, approve continuing education credit on the basis of one (1) continuing education credit hour for every hour of attendance at the following types of programs if a copy of the workshop agenda or course curriculum is submitted to the bureau:

(a) drug or alcohol workshops; or

(b) education courses or workshops.

(4) Every five (5) years after completing the bureau's driver education instructor training course, the driver education instructor shall satisfactorily complete the bureau's eight (8) hour driver education refresher course, which shall renew the driver education instructor's diploma for another five (5) years and meet the driver education instructor's continuing education requirement for that year.

C. Approval/disapproval of application for certificate renewal.

(1) The bureau shall renew the certificate of a driver education instructor for a period of one (1) year if the driver education instructor:

(a) pays the \$50.00 annual certification fee;

(b) meets the standards specified in Subsection E of 18.20.3.18 NMAC;

(c) has received an overall rating of satisfactory or better in the periodic evaluations conducted by the bureau or its designee in the preceding license year; and

(d) has completed eight (8) hours of continuing education in the license year preceding the application for renewal.

(2) The bureau shall not renew the license of any driver education instructor who:

(a) fails to complete eight (8) hours of continuing education in the license year preceding the application for renewal; or

(b) fails to meet the standards specified in Subsection E of 18.20.3.18 NMAC.

[18.20.3.19 NMAC - Rp, 18 NMAC 20.3.15 and 20.3.16, 1-1-03; A, 2-13-09]

18.20.3.20 SUSPENSION OR REVOCATION OF A LICENSE OR CERTIFICATE:

A. Grounds. The bureau may suspend or revoke the license or certificate of a licensee or driver education instructor:

(1) who makes a false statement on an application;

(2) who fails to follow the approved curriculum;

(3) who poses an immediate danger to the physical or mental safety or health of a student;

(4) who is convicted of any alcohol or drug-related driving offense;

(5) who has refused to submit to or failed chemical tests pursuant to the Implied Consent Act;

(6) whose New Mexico driver's license is suspended or revoked;

(7) who fails to notify the bureau in writing within ten (10) days that the licensee or instructor's driver's license has been suspended or revoked as a result of a DWI conviction or refusal to submit to or failure of chemical tests pursuant to the Implied Consent Act, or that the licensee or instructor has been convicted in any jurisdiction of an alcohol or drug-related driving offense or an offense involving moral turpitude;

(8) whose conduct in the performance of official duties is unethical, including but not limited to, verbal abuse, intimidation, or sexual harassment of students;

(9) who fails to comply with any requirement of this rule or any lawful order of the bureau;

(10) who becomes employed or remains employed by a driver education school whose license has been revoked pursuant to this rule;

(11) who employs or continues to employ a driver education instructor whose certificate has been revoked pursuant to this rule; or

(12) whose name appears on the human services department (HSD) listing for failure to comply with any valid child support order or agreement pursuant to the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 or any rule implementing that act.

B. Procedure. The bureau shall use the procedures prescribed in the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978, in all suspension and revocations proceedings held pursuant to this rule.

C. Consequences of suspension or revocation.

(1) A driver education school shall not offer or conduct any driver education courses if its license is suspended or revoked.

(2) A driver education instructor shall not conduct any driver education courses if the instructor's certificate is suspended or revoked.

D. Notice of suspension or revocation. Upon completion of any proceedings held pursuant to the Uniform Licensing Act:

(1) The bureau shall immediately notify by certified mail, return receipt requested, each driver education instructor employed by a driver education school whose license has been suspended or revoked that the driver education school's license has been suspended or revoked and that the driver education instructor may not conduct any driver education courses for that driver education school unless and until the license is reinstated by the bureau.

(2) The bureau shall immediately notify by certified mail, return receipt requested, each driver education school that employs a driver education instructor whose certificate is suspended or revoked that the driver education instructor's certificate has been suspended or revoked and that the driver education school may not employ that driver education instructor unless and until the certificate is reinstated by the bureau.

(3) The bureau shall notify all motor vehicle division field offices that the driver education school's license or the driver education instructor's certificate has been revoked or suspended.

(4) The bureau shall notify all state, metropolitan, magistrate, and municipal courts that the driver education school's license has been revoked or suspended and that the driver education school is no longer an approved school.

[18.20.3.20 NMAC - Rp, 18 NMAC 20.3.17, 20.3.18, and 20.3.22, 1-1-03; A, 2-13-09]

18.20.3.21 EXEMPTION OR VARIANCE:

A. Any school may petition in writing for an exemption or variance from any of the requirements of this rule. Such petition shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the school and its customers, and on its competitors and their customers, if the exemption or variance is not granted;

(4) state how the exemption or variance will achieve the purposes of this rule and the Driving School Licensing Act; and

(5) state why the proposed alternative is in the public interest or is better than the requirement in the rule.

B. Such petition may include a motion that the bureau stay the affected portion of this rule for the transaction specified in the motion.

C. Petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by the licensee or other person with authority to bind the licensee.

D. The bureau may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

E. Each exemption or variance shall be valid for no longer than the end of the current license year.

[18.20.3.21 NMAC - Rp, 18 NMAC 20.3.19 and 20.3.20, 1-1-03; Repealed, 2-13-09; 18.20.3.21 NMAC - Rn, 18.20.3.22 NMAC & A, 2-13-09]

HISTORY OF 18.20.3 NMAC

Pre-NMAC History. The material in this rule was previously filed with the state records center and archives as

SHTD Rule 93-1, Minimum Standards for Driver Education for Commercial Driving Schools, filed 9-3-93.

Repealed Material.

18 NMAC 20.3, New Mexico's Driver Education Schools (filed 6-16-98) repealed 1-1-03.

Other History.

SHTD Rule 93-1, Minimum Standards for Driver Education for Commercial Driving Schools (filed 9-3-93) was renumbered, reformatted, and replaced by 18 NMAC 20.3, New Mexico's Driver Education Schools, effective 7-1-98.

18 NMAC 20.3, New Mexico's Driver Education Schools (filed 6-16-98) was renumbered, reformatted, and replaced by 18.20.3 NMAC, Driver Education Schools, effective 1-1-03.