

NOTICE OF RULEMAKING AND PUBLIC RULE HEARING

The New Mexico Early Childhood Education and Care Department (ECECD) hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to repeal and replace rule 8.9.6 GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY VERIFICATION as authorized by the Early Childhood Education and Care Department Act, specifically Subsection E of Section 9-29-6 NMSA 1978, Subsection H of Section 9-29-8 NMSA 1978, Section 9-29-8.1 NMSA 1978; and the Criminal Offender Employment Act, Sections 28-2-1 to 28-2-6 NMSA 1978.

8.9.6 NMAC - GOVERNING BACKGROUND CHECKS AND EMPLOYMENT HISTORY VERIFICATION

No technical scientific information was consulted in drafting these proposed rules.

Purpose of proposed rules: ECECD proposes to repeal and replace all sections of 8.9.6 NMAC to update the language and structure, improve clarity, and align its standards and requirements with recent amendments to the Criminal Offender Employment Act (Chapter 28, Article 2 NMSA 1978). The new rule does not create new background check requirements, but rather, ensures consistency with statutory mandates, clarifies existing standards, and strengthens the framework governing background checks and employment history verification.

Summary of proposed rules: In summary, ECECD proposes revisions to 8.9.6 NMAC to establish a clearer and more coherent structure for governing background checks. The proposed rule differentiates, in accordance with state and federal requirements, between child care service providers and all other department employees or department-contracted providers who are not child care service providers. The revisions largely reorganize and restructure the existing substantive provisions, while updating definitions, elaborating upon criteria, and clarifying that background check clearances may be denied, suspended, or revoked if ECECD determines the person poses an unreasonable risk.

The new rule separates determinations of unreasonable risk into two sections, one for child care providers and one for everyone else. Each section is then divided between evidence that shall automatically result in a determination of unreasonable risk and evidence that may be considered in making a determination of unreasonable risk. Lastly, the new rule updates and expands upon the rehabilitation petition process, identifying more comprehensive criteria and evidence that may be considered in determining whether an applicant has been rehabilitated.

Copies of the proposed amended rules may be found at ECECD's website at www.nmececd.org/regulation-changes/ 30 days prior to the public rule hearing.

Notice of public rule hearing: A public rule hearing will be held on November 6, 2026, from 10:00 a.m. to 12:00 p.m. for the proposed repeal and replace of 8.9.6 NMAC. The hearing will take place in Apodaca Hall of the PERA Building at 1120 Paseo de Peralta, Santa Fe, New Mexico 87502, and will also be accessible via virtual web platform (Zoom) and by telephone. The hearing will be conducted in a fair and equitable manner by an ECECD agency representative or hearing officer and will be recorded. Any interested member of the public may attend in person, by Zoom, or by telephone and will be provided a reasonable opportunity to offer public comment on the proposed rules during the hearing, either orally or in writing, including presentation of data, views, or arguments. Members of the public will have two minutes to provide oral comments. To attend by telephone, dial 1-719-359-4580, Webinar ID: 873 8763 6767; callers will be able to hear the full hearing, and comments made by telephone will be recorded. To attend via the internet, go to <https://nmececdorg.zoom.us/j/87387636767> and follow the on-screen instructions using Webinar ID: 873 8763 6767. The hearing will be livestreamed, and comments may also be submitted via the platform's chat feature.

Notice of acceptance of written public comment: Written public comments, including presentation of data, views, or arguments about the proposed rules from any interested member of the public may be submitted by email to ECECD-ECS-PublicComment@ECECD.NM.Gov with the subject line "8.9.6 NMAC Public Comment," or by first class mail to PO. Drawer 5619, Santa Fe, New Mexico 87502-5619. Written comments may also be delivered in

person at the PERA Building located at 1120 Paseo De Peralta in Santa Fe, New Mexico, on November 6, 2026, between 10:00 a.m. and 12:00 p.m. Written comments will be accepted from the date this notice is published until the conclusion of the public rule hearing on November 6, 2026.

If you are a person with a disability and would like to request accommodations, or a person with limited English proficiency and need interpretation, please contact the Early Childhood Education and Care Department at ECECD-ECS-PublicComment@ECECD.NM.Gov or call 505-670-8993 at least ten calendar days before the scheduled public rule hearing.