

Date: October 24, 2017 **Prepared By:** Force

Notice of Proposed Rulemaking (NPRM): Repeal Supplemental

Educational Services

Proposed Rule Abstract

- 1. Agency: Public Education Department (PED)
- 2. Rule Citation: 6.19.6 NMAC, Title I Supplemental Educational Services
- 3. Rulemaking Action (Amend, Repeal, Repeal and Replace, New): Repeal
- 4. Register Issue and Date of NPRM: Volume 28, Issue 19, October 17, 2017
- 5. Effective date: None noted. Effective upon publication in the New Mexico Register
- 6. Specific Legal Authority: Sections 22-2-1 and 22-2-2 NMSA 1978
- 7. Purpose of Rule: Align NMAC with the federal Every Student Succeeds Act
- 8. Rulemaking Information Contact: Jamie Gonzales, 505-827-7889; ; rule.feedback@state.nm.us
- 9. Comment Period: October 17 through 5:00 p.m. on November 17, 2017
- **10. Rule Hearing:** November 20, 2017, 2:00 p.m. to 4:00 p.m., Jerry Apodaca Building, 300 Don Gaspar Ave., Santa Fe, NM 87501

Rule Summary

The October 17, 2017 issue of the *New Mexico Register* contains the proposed repeal of Part 6 of 6.19 NMAC, "Title I Supplemental Educational Services" (see **Attachment**, **Proposed Repeal 6.19.6, Supplemental Educational Services**).

Analysis

Supplemental educational services were included in both the federal No Child Left Behind (NCLB) and its successor, the Elementary and Secondary Education Act (ESEA). Requirements for Title I supplemental educational services are not included in the federal Every Student Succeeds Act (ESSA). Moreover, the statute that required supplemental educational services in New Mexico, Section 22-2C-7 NMSA 1978, was repealed in Laws 2015, Chapter 58, Section 15, which was LESC-sponsored legislation. Considering the absence of requirements in ESSA, as well as the repeal of pertinent state law, PED found the rule unnecessary, and proposed this repeal.

Background

The federal NCLB required Title I schools that failed to make adequate yearly progress (AYP) for three consecutive years to use a portion of its Title I funds to provide supplemental educational services to students from low-income families attending the school. These services were academic instruction provided in addition to instruction during the school day, such as tutoring, remediation, and other



academic enrichment services that were consistent with the content and instruction used by the local educational agency (LEA) and were aligned with the state's academic content and achievement standards. They were required to be high quality, research-based, and designed to increase student achievement. They were to be offered through public- or private-sector providers and selected by parents.

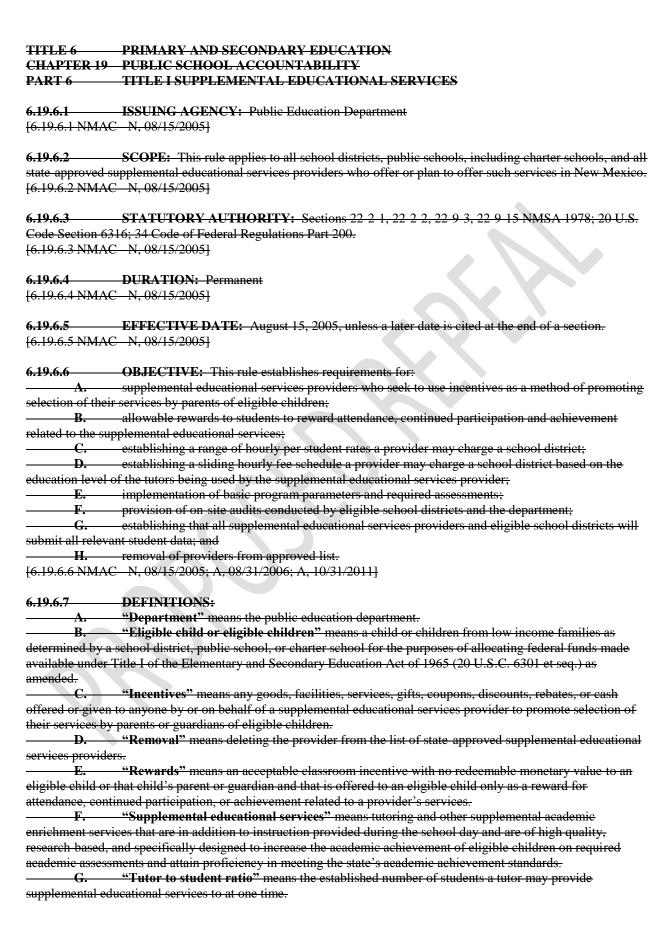
In 2011, the supplemental educational services landscape began to change as the reauthorization of NCLB became uncertain. The US Department of Education (USDE) offered states the opportunity for flexibility from certain provisions of ESEA in exchange for rigorous, state-developed plans to improve educational outcomes for all students, close achievement gaps, increase equity, and improve quality of instruction. New Mexico's ESEA flexibility request was approved by USDE in February 2012. Under that program, New Mexico received a waiver from the requirement to identify schools in need of improvement, corrective action, or restructuring. In turn, this flexibility also relieved school districts and schools that may have been identified for improvement from a number of requirements, including the provision of supplemental educational services.

New Mexico's Assessment and Accountability Act still included provisions for AYP and other issues of federal law under NCLB that were waived under ESEA flexibility. The state's ESEA flexibility plan put schools in the state under two separate accountability systems: the determination of AYP and schools in need of improvement, which included provision for supplemental educational services, and the state flexibility program that required the identification of "priority" and "focus schools" under the accountability systems established for the flexibility program.

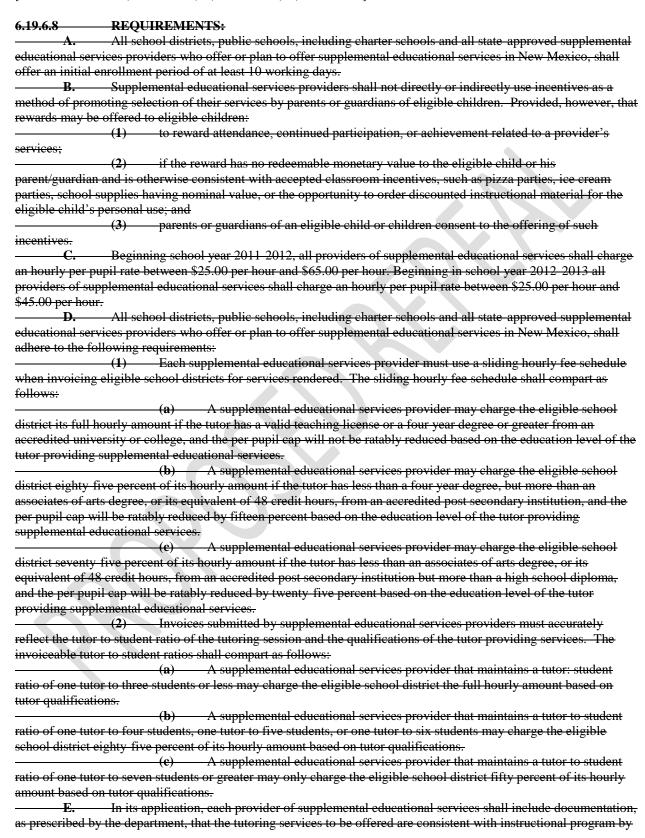
Laws 2015, Chapter 58 (House Bill 165), endorsed by the LESC, was proposed during the 2015 regular legislative session to repeal certain provisions of the Assessment and Accountability Act related to the then defunct AYP requirements, including the requirement for the promulgation of rules administering supplemental educational services. The bill passed the Legislature and was signed by the governor, effectively ending the supplemental educational services requirements at the state level. When NCLB was finally reauthorized as ESSA in 2015, provision of supplemental educational services was no longer required, although states were required to withhold 7 percent of their Title I funds for school improvement grants that may include the sorts of services previously required for supplemental educational services. Additionally, states may withhold an additional 3 percent of Title I funds for "direct student services," including extended learning times.

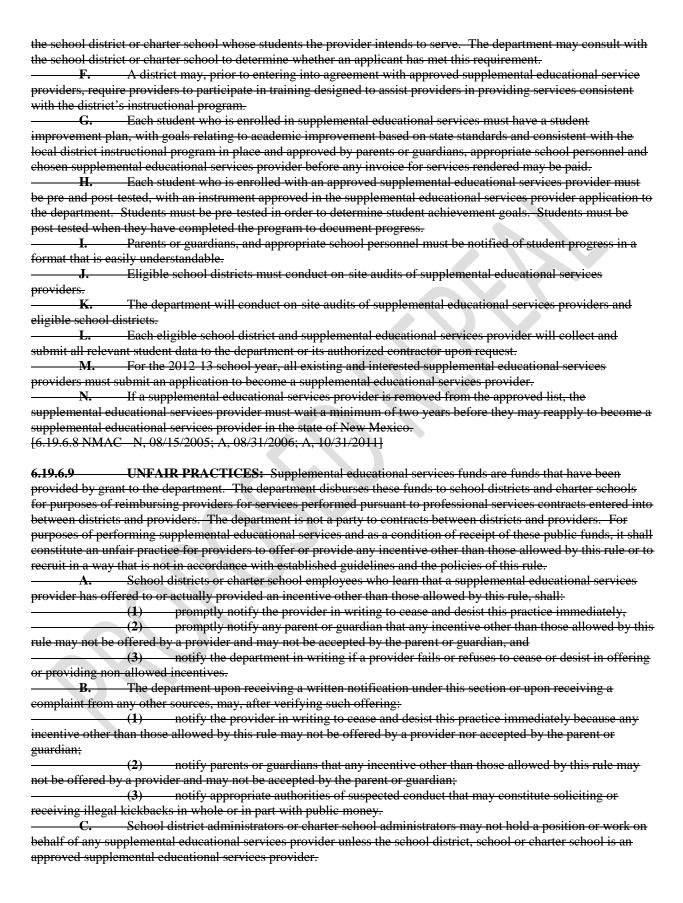
As supplemental educational services is no longer required under ESSA, and the state requirement to promulgate rules for the program's administration is no longer required at state law, PED is proposing to repeal the rule.





[6.19.6.7 NMAC N, 08/15/2005; A, 08/31/2006; A, 10/31/2011]





Proposed Repeal 6.19.6, Supplemental Educational Services

ATTACHMENT

D. If a school district or charter school employee learns that a supplemental educational services
provider is recruiting in a way that is not in accordance with established district guidelines and the policies of this
rule, that person shall:
(1) promptly notify the provider in writing to cease and desist this practice immediately; and
(2) notify the department in writing if a provider fails or refuses to cease or desist in
recruiting in a manner not allowable.
E. Eligible school district personnel may not show favoritism to any supplemental educational
services provider.
[6.19.6.9 NMAC N, 08/15/2005; A, 08/31/2006; A, 10/31/2011]
6.19.6.10 REMOVAL OF PROVIDERS: Supplemental educational services providers must strictly
adhere to their approved application and the policies of this rule. If any provider demonstrates a pervasive pattern of
violating any aspect of their application or any part of this rule they will be removed from the state approved list of
supplemental education services providers. Providers will be removed from the state approved list of supplemental
educational services providers if there are any violations of test security of the New Mexico standards based
assessment. In addition, providers will be removed for failing to contribute to the academic improvement of
students as determined by the state evaluation. Each supplemental educational services provider that is to be
removed may ask for an opportunity to clarify reasons for dismissal and request an appeal. A district or charter
school has the option not to enter into a contract with a supplemental educational services provider who fails to meet
the terms of the contract in the preceding year or does not provide services to eligible students who have requested
their services in the preceding year.
IG 10 6 10 NIM AC N . 08/31/2006: A . 10/31/20111
10 19 0 111 NW/W N 118/31//HBb* // 111/31//HH H

HISTORY OF 6.19.6 NMAC: [RESERVED]