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April 23, 2014

MEMORANDUM

TO: Legislative Education Study Committee

FR: Kevin Force

RE: STAFF BRIEF: ADMINISTRATIVE RULEMAKING

Proposed Rules:

- **6.8.10 NMAC, Compulsory School Attendance**
- **6.12.6 NMAC, School District Wellness Policy**
- **6.12.7 NMAC, Bullying Prevention**
- **6.30.5 NMAC, Optional Full-day Kindergarten Program**
- **6.30.9 NMAC, Pre-Kindergarten Program**
- **6.30.12 NMAC, K-3 Plus Program**

Proposed Rulemakings

In the February 14, 2014 issue, the Public Education Department (PED) published in the *New Mexico Register* a Notice of Proposed Rulemaking introducing amendments to a number of PED rules, including rules regarding:

- compulsory school attendance;
- school wellness; and
- bullying prevention.

The Notice solicited comments on the listed rules and announced a public hearing on the proposed rulemakings, to be held on March 17, 2014, in Mabry Hall of the Jerry Apodaca Education Building in Santa Fe. (See **Attachment 1, PED NPRM, Attendance, Wellness and Bullying Prevention, 2/14/14.**)

The February 28, 2014 issue of the *Register* also included a Notice of Proposed Rulemaking published by PED, which proposed:

- amendments to rules for the pre-kindergarten program;
- amendments for the optional full-day kindergarten program; and
- new rules for the administration of the K-3 Plus Program.

The Notice solicited comments on the proposed rules and announced a public hearing on the rulemakings, to be held on March 31, 2014, in Mabry Hall of the Jerry Apodaca Education Building in Santa Fe. (See **Attachment 2, PED NPRM, Optional Full-day Kindergarten, Pre-K and K-3 Plus, 2/28/14.**)

6.8.10 NMAC, Compulsory School Attendance

The proposed amendments (see **Attachment 3, Proposed Rule, Compulsory School Attendance, 2/14/14**) to the rule would require school districts to include in their written attendance policies provision for:

- certain excused absences for pregnant and parenting students, as well as a time period equivalent to the time of a student's excused absence, which would allow a student to make up missed work, including:
 - at least 10 days of excused absences for a student who provides documentation of the birth of the student's child;
 - excused absences for any additional days deemed medically necessary by the pregnant or parenting student's physician; and
 - four additional days of excused absences per semester, over the number of excused absences allowed for all students, if the student in question can document their pregnancy or parenthood of a child under the age of 13 who needs care;
- clear communication that the pregnant or parenting student is responsible for communicating the student's status as a parent to school personnel, if the student so chooses to disclose this status; and
- copies of pregnant and parenting student absence policies to be provided to all students in middle, junior high, and high schools.

The amendments proposed by this rulemaking arise from legislation enacted during the 2013 regular legislative session.¹

¹ See Laws 2013, Chapter 198.

6.12.6 NMAC, School District Wellness Policy

The amendments proposed by this rulemaking (see **Attachment 4, Proposed Rule, School District Wellness Policy, 2/14/14**) include:

- removal of defined term, “tactical emergency response plan” and its replacement with the term “Emergency Operation Plan,” which means that the document, as part of a school safety plan:
 - explains functions, resources, and procedures for responding to and supporting crisis, emergency, terrorist-response, and disaster operations;
 - details risk assessments;
 - establishes procedures to manage an emergency before, during, and after the event has occurred; and
 - includes emergency routes and staff assignments as they relate to immediate action, delayed action, mitigating action, and faculty evacuation and reentry; and
- a requirement that school safety plans be included in the school wellness policy, and that they:
 - focus on supporting school as a healthy and safe learning environment;
 - be submitted to PED for approval on a three-year cycle; and
 - include, at a minimum:
 - an introduction;
 - school policies and procedures;
 - prevention; and
 - the school Emergency Operation Plan.

6.12.7 NMAC, Bullying Prevention

This rulemaking (see **Attachment 5, Proposed Rule, Bullying Prevention, 2/14/14**) contains a number of amendments that specifically add requirements for the prevention of cyberbullying to these rules, as well as certain administrative amendments, including:

- changes to the scope of the rule, which formerly applied to “all public schools, including charter schools, and state supported educational institutions,” so that the rule now applies to local school boards and all public schools, including charter schools;
- the addition of Section 22-2-21, “Bullying and Cyberbullying Prevention Programs,” to the statutory authority of the rule; and
- the addition of bullying prevention programs to the objective of the rule, a more specific goal than the current objective, which speaks only of “address[ing] bullying of students by adopting and implementing policies.”

Provisions proposed to address the issue of cyberbullying include:

- a definition of “cyberbullying,” which means electronic communication that:
 - targets a specific student;
 - is intended to be seen by the targeted student, and is in fact seen by, or disclosed to, that student; and
 - creates such a severely and pervasively hostile environment so as to substantially interfere with the student’s education;
- a definition of “public school,” which cross-references the definition found in the *Public School Code* and which includes charter schools;²
- the removal of reference to “charter schools” in the definition of “local school board”;
- a requirement that local school boards have cyberbullying *policies and programs* in effect beginning with school year 2013-2014;
- specific requirements for bullying prevention *policies*, including:
 - an absolute prohibition of cyberbullying;
 - inclusion of the anti-cyberbullying policies in anti-bullying materials to be disseminated to students, parents, and school employees and administrators;
 - procedures for reporting cyberbullying;
 - consequences for engaging in cyberbullying, compliant with the state and federal *Individuals with Disabilities Education Act* requirements; and
 - a requirement that all school staff report incidents of cyberbullying;
- specific requirements for cyberbullying prevention *policies*, including required:
 - training for all school employees on how to recognize signs of cyberbullying;
 - reporting of cyberbullying, or reasonable suspicions of such, to either or both the principal or charter school administrator, and the local superintendant;
 - promptly initiated investigations of any reported activity; and
 - prompt disciplinary action in response to confirmed cyberbullying, with the proviso that such action be by the least restrictive means necessary, and which may include counseling or mediation, or other discipline consistent with the rights of the students involved;
- a requirement that all public schools implement bullying and cyberbullying prevention *programs*;
- a requirement that all local school boards submit to PED assurances of:
 - the adoption and implementation of the required anti-bullying and cyberbullying *policies*;

² 22-1-2(L) NMSA 1978. “Public school” means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school, or any combination of those and includes a charter school.

- review any necessary revision of disciplinary *policies* to ensure that they address cyberbullying; and
 - implementation of cyberbullying training for school employees; and
- a requirement that all local school boards and charter schools submit to PED assurances of the implementation of bullying and cyberbullying prevention *programs*.³

The amendments proposed by this rulemaking arise from legislation enacted during the 2013 regular legislative session.⁴

There appears to be some ambiguity in the proposed rulemaking regarding the extent to which the requirements of the rule apply to charter schools. This ambiguity arises out of the definitions of “public school” and “local school board” as well as the use of the terms “policy” and “program.”

Several examples illustrate the potential ambiguities in the rule:

1. Regarding 6.12.7.8(A), it appears that the section applies only to policies and programs adopted and implemented by local school boards, which by definition do not include charter schools, either locally or state-chartered.⁵ Nor does the section appear to apply to programs implemented by public schools.
2. Local school boards are required to develop and implement cyberbullying prevention *policies*, to include certain elements, as mandated by Section 22-2-21. Public schools, including charter schools, are to implement cyberbullying prevention *programs*, but in the case of charter schools, it is unclear if their programs must include those required elements. This question is of particular relevance to state-chartered charter schools, which lack a district to look to for any administrative authority.
3. Local school boards must submit to PED assurances of their adoption and implementation of anti-bullying policies, their review and revision of disciplinary policy, and the implementation of training for their school employees. Again, it is unclear how this provision would apply to charter schools, particularly state-chartered charter schools; as it stands, the proposed rule seems to exempt charter schools from this requirement.
4. References in 6.12.7.8(D) do suggest that charter schools were contemplated as being required to comply with this subsection, such as the reference to the head administrator of a charter school in Subsection (D)(2); yet ambiguity remains because this subsection deals specifically with *policies*, and under Subsection (B), charter schools are not required to implement policies.

³ It should be noted that, by removing reference to “charter schools” in the definition of “local school board,” it appears as if the duty to assure PED of implementation of the required programs does not include, for charter schools, the review and revision of discipline policies to address cyberbullying, or the implementation of training for charter school employees.

⁴ See Laws 2013, Chapter 178.

⁵ See Section 22-1-2(H), NMSA 1978: “local school board” means the policy-setting body of a school district...”

6.30.5 NMAC, Optional Full-day Kindergarten Program

The amendments (see **Attachment 6, Proposed Rule, Optional Full-Day Kindergarten, 2/28/14**) proposed by this rule include:

- new definitions, such as:
 - “kindergarten entry assessment,” an assessment conducted within the first 30 calendar days of the school year;
 - “progress monitoring,” which means assessments conducted, between screenings, for students who are receiving targeted and intensive interventions, in order to determine whether the student is benefiting from the interventions; and
 - “screening” which is an assessment conducted three to four times per year for all students to assess specific skills and identify students who are at risk, academically;
- changes to the requirements regarding the length of the school-day and -year, so that the entire section has been stricken and replaced with a single cross-reference: “Students in full-day kindergarten programs must comply with the minimum length of school day and school year as required in Section 22-2-8.1 NMSA 1978⁶ and Section 6.10.5 NMAC”⁷;
- beginning with school year 2015-2016, requirements regarding the administration and reporting of the kindergarten entry assessment:
 - all kindergarten students must be administered the entry assessment, provided by PED, with assessment data being reported no later than October 1 of each school year;
 - all kindergarten students must be screened, with PED-approved assessments, three times per school year to determine if they are making adequate progress toward grade-level proficiency, with screening assessment data being reported to PED within the first 30 instructional days of the school year; and
 - students, whom the screening assessment indicates have a reading deficiency, must receive more frequent progress monitoring to determine if they are likely to meet grade-level expectations by the end of the school year.⁸

Finally, this rulemaking proposes to repeal and reserve the last two sections of the rule, sections 6.30.5.14 and 6.30.5.15, “Program Approval” and “End of Year Evaluation,” respectively.

According to PED, this rulemaking was proposed to incorporate updated information, as well as to address the Kindergarten Entry Assessment requirement of the Race to the Top Early Learning Challenge Grant.

⁶ Full-day kindergarten programs must meet for five and one-half hours per day, or 990 hours per year, with up to 33 hours being permitted for home visits, or parent-teacher conferences, by the teacher.

⁷ For full-day programs on a condensed year calendar (four-day week), a minimum of six hours and 36 minutes per day; for regular and variable calendars, a minimum of five and one-half hours per day. In all cases, up to 33 hours may be used for home visits and parent-teacher conferences.

⁸ While the language regarding progress monitoring is unclear, presumably the results of the thrice-annual screening are submitted to PED within the first 30 days of the *next* school year, with students having reading deficiencies subject to further monitoring to determine progress for their current school year.

6.30.9 NMAC, Pre-Kindergarten Program

The department proposes amendments (see **Attachment 7, Proposed Rule, Pre-Kindergarten, 2/28/14**) to the Pre-Kindergarten Program (pre-K) that include:

- the removal of the defined term “early childhood development specialist,” and its replacement with “early childhood licensed teacher,” which means an adult who is responsible for working directly with four-year-old children in implementing pre-K services, and who is licensed by PED for early childhood education for:
 - birth through third grade;
 - birth through pre-K; or
 - pre-K through third grade;
- the removal of the defined term “request for proposal, or RFP,” and its replacement with “request for application, or RFA, which means all documents, including those attached or incorporated by reference, used for soliciting pre-K program applications;
- removal of reference to requirements for licensure and endorsements for pre-K early childhood specialists, and its replacement with reference to requirements for teacher and educational assistant licensure for pre-K programs;
- changes to eligibility requirements, to:
 - clarify program application to four-year-olds *not* eligible for kindergarten; and
 - allow public schools to provide pre-K services on a per-child reimbursement rate in communities with schools that are designated as Title I schools;
- provisions specifically allowing RFAs for pre-K services to be issued for public schools and charter schools; and
- a requirement that, for funding purposes, at least 66 percent of the children served by a particular pre-K program live within the attendance area of a Title I elementary school.

6.30.12 NMAC, K-3 Plus Program

PED proposes new rules (see **Attachment 8, Proposed Rule, K-3 Plus, 2/28/14**) for the administration of the K-3 Plus Program, as required by statute,⁹ including:

- New definitions, such as those for:
 - “award period,” or the period of at least 25 additional instructional days provided through the program, between the close of the previous and the opening of the following school year;
 - “evidence-based or research-based scientific reading strategies and programs,” which mean instructional strategies and reading programs that apply rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties;

⁹ Section 22-13-28(D) NMSA 1978.

- “high-poverty public schools,” which means a public school, including a charter school, in which at least 80 percent of the students are eligible for free or reduced lunch, or an elementary school with a D or F grade the previous year as determined in accordance with the *A-B-C-D-F Schools Rating Act* and accompanying rules;¹⁰
 - “progress monitoring,” which means assessments administered between screenings for students who are receiving targeted and intensive interventions, in order to determine whether the student is benefitting from those interventions; and
 - “screening assessment,” or an assessment conducted three to four times a year for all students to assess specific skills and to identify students who are at risk, academically;
- the limitation of eligibility for the program to high-poverty public schools;
 - required elements of the program, such as:
 - Instruction, which includes:
 - requirements of the daily classroom schedule, such as 90 minutes of literacy instruction for kindergarteners and 120 minutes for students in grades 1 through 3;
 - a comprehensive research-based early literacy core basal reading program in alignment with the English language arts Common Core State Standards (CCSS);
 - a comprehensive, developmentally appropriate mathematics program with at least 90 minutes of instruction aligned with the CCSS; and
 - literacy and numeracy interventions for enrolled students who are not meeting grade level requirements;
 - Assessments, including:
 - math and literacy assessments to be administered at the beginning of the K-3 Plus Program, during the course of the program, the beginning of the regular school year, the mid-point of the school year, and the end of the year; and
 - a standardized assessment in literacy, provided by PED, to measure the students’ reading skills, such as phonics, phonological awareness, fluency, vocabulary, and comprehension, that includes screening, progress monitoring, and end-of-year measures;
 - Professional development, which will be provided by PED, in “scientific-based” early literacy research, and will include best practices for English as a second language (ESL) and mathematics instruction; and
 - the dissemination of information by PED on best practices for student recruitment and retention, as well as academic success for early learners;
 - the application process, including:
 - submission and review procedures and deadlines; and
 - priority for those schools with evidence-based, scientific reading programs;

¹⁰ See Chapter 22, Article 2E NMSA 1978 and 6.19.8 NMAC.

- provisions for funding of the program, including:
 - a requirement that the required 25 additional instructional days of the program at least be comprised of the total number of hours that would meet the minimum requisite hours per day established by statute;¹¹
 - a provision for funding the program for each reported student based on at least 30 percent of the initial unit value for 1.0 program unit, with final funding being based on the number of students enrolled as of the fifteenth day who have been in attendance for at least 10 days of the program;
 - a stipulation that all program funds shall be paid on a reimbursement basis, with all requests for reimbursement (RfR) submitted to PED by December 31 of the program's fiscal year, unless the school is on an alternate schedule (or if agreed to by PED), in which case the RfR must be submitted by June 30;
 - a stipulation that, while program funds may not supplant funds designated for year-round activities, they may be used for:
 - salaries for teachers and educational assistants;
 - program materials and supplies; and
 - recruitment activities and attendance incentives (up to 2.0 percent of the funds received by a district or charter shall be used for student recruitment and regular attendance); and
 - a requirement that special education services beyond those of the K-3 Plus Program that are required by the *Individuals with Disabilities Education Act* may be paid for by the district special education budget, so long as districts meet their obligations for maintenance of effort; and
- evaluation and reporting, such as:
 - annual and interim reports for student and program assessments, to include demographic data, though PED may request additional information regarding staffing, licensure, program elements, professional development, parent involvement, etc.;
 - all participating students must be reported to the department to include, for example:
 - demographic information;
 - services rendered as Responses to Intervention;
 - assigned teachers; and
 - number of years in the program;
 - PED or designated evaluators will conduct site visits; and
 - annual reports to the Legislature and the Governor on the efficacy of the program.

¹¹ See Section 22-2-8.1 NMSA 1978.

LESC staff note a number of potential drafting issues in the rules as proposed:

- defined terms that do not appear outside the definition section of the rule, such as “enrollment” and “screening assessment”;
- inconsistent reference to the length of the school year, which is measured in statute in hours, rather than days;
- a missing section between sections 6.30.12.8 and 6.30.12.10;
- incorporation by reference of the CCSS, exclusive of the 15 percent additional standards adopted by New Mexico in English language arts for English language learners;
- lack of clarity, in the section detailing assessment requirements, regarding which assessments are to be administered at which point in the program;
- minor auxiliary verb usage issues, with “will,” “must,” and “should” being used instead of “may” or “shall”; and
- lack of clarity regarding whether the final funding is to be based on the initial or final unit value:
 - the enabling statute that established the K-3 Plus Program¹² states that funding for the program shall be *contingent* upon the *final* unit value; however,
 - the rule states that the be funded based on at least 30 percent of the *initial* unit value for one program unit, with final funding *based* upon the number of students enrolled (on the fifteenth day) who have been in attendance for 10 or more days. (Emphasis added.)

¹² 22-13-28(F) NMSA 1978.

**PED NPRM, Attendance, Wellness
and Bullying Prevention, 2/14/14**

ATTACHMENT 1

New Mexico Register / Volume XXV, Number 3 / February 14, 2014

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
NOTICE OF PROPOSED RULEMAKING

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Monday, March 17, 2014, at the times indicated below. The purpose of the public hearing will be to obtain input on the following rules.

Rule Number	Rule Name	Proposed Action	Hearing Time
6.12.7 NMAC	BULLYING PREVENTION	Amend rule	10:00 a.m. to noon
6.12.6 NMAC	SCHOOL DISTRICT WELLNESS POLICY	Amend rule	1 p.m. to 2 p.m.
6.10.8 NMAC	COMPULSORY SCHOOL ATTENDANCE	Amend rule	1 p.m. to 2 p.m.

Interested individuals may provide comments at the public hearing and/or submit written comments to Dean Hopper, School and Family Support Bureau Director, via email at rule.feedback@state.nm.us, fax (505) 827-1826, or directed to Mr. Hopper, School and Family Support Bureau Director, Public Education Department, 120 S. Federal Place, Room 206, Santa Fe, New Mexico 87501. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department’s website (<http://ped.state.nm.us/>) under the “Public Notices” link, or obtained from Mr. Hopper by calling (505) 827-1806.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Mr. Hopper as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

**PED NPRM, Optional Full-day Kindergarten, Pre-K
and K-3 Plus**

ATTACHMENT 2

New Mexico Register / Volume XXV, Number 4 / February 28, 2014

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
NOTICE OF PROPOSED RULEMAKING

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Monday, March 31, 2014, from 10:00 a.m. to noon. The purpose of the public hearing will be to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action
6.30.5 NMAC	OPTIONAL FULL-DAY KINDERGARTEN PROGRAM	Amend rule
6.30.9 NMAC	PRE-KINDERGARTEN PROGRAM	Amend rule
6.30.12 NMAC	K-3 PLUS PROGRAM	Adopt new rule

Interested individuals may provide comments at the public hearing and/or submit written comments to Melinda Webster, Director, Literacy and Early Childhood Bureau, via email at rule.feedback@state.nm.us, fax (505) 827-6597 or directed to Ms. Webster, Literacy and Early Childhood Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department’s website under the “Public Notices” link (<http://ped.state.nm.us/ped/PublicNotices.html>), or obtained from Ms. Webster by calling (505) 827-6567.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Ms. Webster as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 10 PUBLIC SCHOOL ADMINISTRATION - PROCEDURAL REQUIREMENTS
PART 8 COMPULSORY SCHOOL ATTENDANCE

6.10.8.1 ISSUING AGENCY: Public Education Department
[6.10.8.1 NMAC - N, 12-30-04]

6.10.8.2 SCOPE: All New Mexico school districts, public schools including charter schools, and home schools.
[6.10.8.2 NMAC - N, 12-30-04]

6.10.8.3 STATUTORY AUTHORITY: Sections 22-1-2, 22-1-2.1, 22-2-1, 22-2-2, 22-2-14, 22-5-4, 22-5-14, 22-10A-31, 22-12-1 to 22-12-9, NMSA 1978, and 20 U.S.C. Sections 7111, 7112.
[6.10.8.3 NMAC - N, 12-30-04]

6.10.8.4 DURATION: Permanent
[6.10.8.4 NMAC - N, 12-30-04]

6.10.8.5 EFFECTIVE DATE: December 30, 2004, unless a later date is specified at the end of a section.
[6.10.8.5 NMAC - N, 12-30-04]

6.10.8.6 OBJECTIVE: To set forth the requirements for the implementation of the compulsory school attendance law. Specifically, this rule establishes requirements for the identification, reduction and reporting of truancy in all public schools including charter schools. In addressing truancy, the goal is to keep children in school until age eighteen and not to suspend, expel or outright punish them for being truant.
[6.10.8.6 NMAC - N, 12-30-04; A, 09-30-09]

6.10.8.7 DEFINITIONS:

A. "Attendance" means students who are in class or in a school-approved activity. If a student is in attendance up to one half the total instructional time during a school day, the student will be counted as having attended one-half of a school day. If the student attends school for more than one-half of the total instructional time, the student will be counted as having attended for the full day.

B. "Early identification" means the process by which school districts including charter schools promptly determine and identify students who have excessive absences and tardiness from an instructional day. Early identification includes the school district's, individual school's or charter school's defined system for recording, reporting, and summarizing daily attendance of its students and then providing that data to the district's or charter school's central administration.

C. "Habitual truant" means a student who has accumulated the equivalent of ten or more unexcused absences within a school year.

D. "Home school" means the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science.

E. "Home school truant" means a school age child whose parent(s)/guardian(s) have filed a home school notification about that child with the department but the child has failed or refused to participate in, or is no longer being offered, any home-study program of instruction.

F. "Intervention" means the partnering that schools engage in with other agencies to implement administrative remedies, provide services and provide support programs that aggressively reduce if not eliminate truancy in a school district or charter school.

G. "Prevention" means school-based innovative or proven successful programs, including alternative programs whether school-based or non-school based, that encourage regular and on-time attendance for students.

H. "School-age person" means a person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year and who has not received a high school diploma or its equivalent. A maximum age of twenty-one shall be used for a person who is classified as special education membership as defined in Section 22-8-21 NMSA 1978 or as a resident of a state institution.

I. "Student in need of early intervention" means a student who has accumulated five unexcused absences within a school year.

**Proposed Rule, Compulsory School Attendance,
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J. "Tribe" means an Indian nation, tribe or pueblo located within New Mexico.

K. "Unexcused absence" means an absence from school or a class for which the student does not have an allowable excuse pursuant to the compulsory school attendance law or rules of the local school board, governing authority of a private school, or governing board of a charter school.
[6.10.8.7 NMAC - N, 12-30-04; A, 09-30-09]

6.10.8.8 REQUIREMENTS:

A. It is the policy of this state that school age persons receive an education and do not dropout or otherwise withdraw prematurely prior to completing an educational program. To that end, a school-age person shall attend public school, private school, home school or a state institution until the school-age person is at least eighteen years of age unless that person has graduated from high school or received a general educational development certificate. A parent may give written, signed permission for the school-age person to leave school in case of a documented hardship approved by the local superintendent.

B. Each local school board and charter school shall develop a written attendance policy that:

(1) in accordance with the definition of "attendance" stated in this rule, requires that class attendance be taken and maintained by class period for every instructional day for each student in each school or school program in the school district;

(2) provides excused absences for pregnant and parenting students as follows:

(a) provides at least ten days of excused absences for a student who provides documentation of the birth of the student's child and allows the student a time period to make up the work that the student missed that equals the number of days the student was absent for the birth of a child;

(b) provides excused absences for any additional days missed by a pregnant or parenting student for which a longer period of absence is deemed medically necessary by the student's physician and allows the student a time period to make up the work that the student missed that equals the number of days the student was absent;

(c) provides four days per semester of excused absences, in addition to the number of allowed absences for all students, for a student who provides appropriate documentation of pregnancy or that the student is the parent of a child under the age of thirteen needing care and allows the student a time period to make up the work that the student missed that equals the number of days the student was absent;

(d) clearly states that the pregnant or parenting student is responsible for communicating the student's pregnancy and parenting status to the appropriate school personnel if the student chooses to disclose the information; and

(e) provides that the school district or charter school shall provide a copy of the pregnant and parenting student absence policies to all students in middle, junior high and high schools; and

~~(2)~~ (3) requires each school to report unexcused absences of two or more classes up to fifty percent of an instructional day as one-half day absence, and the unexcused absence of more than fifty percent of an instructional day to be counted as one full-day absence;

~~(3)~~ (4) prohibits out-of-school suspension and expulsion as a punishment for unexcused absences and habitual truancy;

~~(4)~~ (5) uses withdrawal as provided in Section 22-8-2 NMSA 1978 only after exhausting intervention efforts to keep students in educational settings;

~~(5)~~ (6) provides for early identification of students with unexcused absences, students in need of early intervention, and habitual truants; provides for intervention strategies that focus on keeping students in need of early intervention in an educational setting; and further provides that:

(a) if a student is in need of early intervention, the school district or charter school shall contact the student's parent(s)/guardian(s) to inform them that the student has unexcused absences from school and to discuss possible interventions unless the parent(s)/guardian(s) has contacted the school to explain the absence and the excuse complies with the school district attendance policy;

(b) a representative of the school district or charter school shall meet with the student in need of early intervention and his or her parent(s)/guardian(s) to identify the causes for the student's unexcused absences, identify what actions can be taken that might prevent the student's unexcused absences, identify possible school district, charter school and community resources to address the causes for the student's unexcused absences, and establish a corrective action plan to address the student's unexcused absences;

(c) the notification to the student's parent(s)/guardian(s) and the meeting with the parent(s)/guardian(s) must be respectful and in a language and in manner that is understandable to the student and the parent(s)/guardian(s);

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(d) the corrective action plan must contain follow-up procedures to ensure that the causes for the student's unexcused absences are being addressed;

(e) if the student is a habitual truant, the local school board, charter school or their authorized representatives shall, in addition, give written notice of the habitual truancy by mail to or by personal service on the student's parent(s)/guardian(s); the notice shall include a date, time and place for the parent to meet with the local school district or charter to develop intervention strategies that focus on keeping the student in an educational setting;

(f) if there is another unexcused absence after delivery of a written notice of habitual truancy, the student shall within seven (7) days of this unexcused absence be reported to the probation services office of the judicial district where the student resides;

(g) if the student is a habitual truant the school shall document the following for each student identified as a habitual truant:

- (i) attempts of the school to notify the parent that the student had unexcused absences;
- (ii) attempts of the school to meet with the parent to discuss intervention strategies; and
- (iii) intervention strategies implemented to support keeping the student in school.

C. If the habitual truant is not referred to the children's court by the juvenile probation office for appropriate disposition, including consideration of initial or renewed suspension of his or her driving privileges, the school district may contact the children's court attorney directly to determine what action will be taken.

D. If a determination and finding has been made by the juvenile probation office that the habitual truancy by a student may have been caused by the parent or guardian of the student, and no charges have been filed against the parent or guardian, the school district may contact the district attorney's office to determine what action will be taken.

E. A copy of the local school board or charter school's attendance policy shall be provided to the public education department's ~~truancy prevention coordinator~~ health education coordinator or designated staff for approval within ten (10) days of its adoption by the local school board or governing body of a charter school.

F. The public education department's truancy prevention coordinator shall be permitted access to any records and information related to students in need of early intervention or habitual truancy in any school district, any particular school within a district, or any charter school.

[6.10.8.8 NMAC - N, 12-30-04; A, 09-30-09; A, xx-xx-14]

6.10.8.9 INTERGOVERNMENTAL AGREEMENTS: In carrying out its duties under this rule and the compulsory school attendance law, school districts and charter schools shall take into consideration the sovereignty of a Native American tribe. While all children attending public schools will still be subject to being reported to the public education department if they are habitually truant, a school district or charter school shall respect tribal laws and traditions in carrying out its duties of early identification, intervention, and parental notification. To do so, school districts and charter schools shall adopt policies that:

A. emphasize a better understanding of tribal customs, religious practices and laws,

B. consider entering into a memorandum of agreement, a memorandum of understanding, or some other form of intergovernmental agreement with Native American tribes,

C. consider respectful and effective ways to notify a parent(s)/guardian(s) of student in need of intervention and habitually truant Native American students,

D. consider follow-up or reinforcement procedures after Native American children have undergone intervention through Native American or other agreed upon resources.

[6.10.8.9 NMAC - N, 12-30-04; A, 09-30-09]

6.10.8.10 REPORTING REQUIREMENT:

A. Each school district and each individual charter school shall maintain class attendance records by class period for every instructional day for each student in each school or school program in the school district or charter school in a manner verifiable by the public education department.

B. The local superintendent of each school district or governing body or administrative head of a charter school will report absences with excused and unexcused identifiers through the student teacher accountability reporting system and certify that the information is being reported consistently at intervals and in a manner as specified by the public education department.

[6.10.8.10 NMAC - N, 12-30-04; A, 09-30-09]

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6.10.8.11 HOME SCHOOLS: Upon receipt of verified information that a school age child whose parent(s)/guardian(s) have previously filed a home school notification about that child with the department but that child has failed or refused to participate in, or is no longer being offered, any home-study program of instruction, the department may obtain a reasonable assurance from the parent(s) or guardian that the child is actually engaged in a home-study program of instruction. In addition to any other remedies permitted by the compulsory school attendance law or the children's code, upon a determination that a home school student is repeatedly not (or no longer) engaged in a home-study program of instruction, the department may order that the home school habitual truant attend a public school, or at the election of his parent/guardian, a private school. Prior to pursuing these other remedies, the public education department shall make a reasonable effort to accommodate the parents'/guardians' preference for maintaining their child in a home school.
[6.10.8.11 NMAC - N, 12-30-04; A, 09-30-09]

6.10.8.12 FAILURE TO COMPLY WITH THIS RULE: Failure to comply with this rule may be good and just grounds for the suspension or revocation of a department-issued license or certificate, may result in notification by the department to the local school board, superintendent, school principal or governing body of a charter school that they have failed to meet requirements as prescribed by law or rules promulgated by the department, and may be grounds for seeking a court order to ensure compliance with the requirements of this rule.
[6.10.8.12 NMAC - N, 12-30-04]

HISTORY of 6.10.8 NMAC: [Reserved]

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 6 SCHOOL DISTRICT WELLNESS POLICY

6.12.6.1 ISSUING AGENCY: Public Education Department
[6.12.6.1 NMAC - N, 02-28-06]

6.12.6.2 SCOPE: This regulation applies to public schools in New Mexico unless otherwise expressly limited.
[6.12.6.2 NMAC - N, 02-28-06]

6.12.6.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Sections 22-2-1 and 9-24-8 NMSA 1978.
[6.12.6.3 NMAC - N, 02-28-06]

6.12.6.4 DURATION: Permanent
[6.12.6.4 NMAC - N, 02-28-06]

6.12.6.5 EFFECTIVE DATE: February 28, 2006, unless a later date is cited at the end of a section.
[6.12.6.5 NMAC - N, 02-28-06]

6.12.6.6 OBJECTIVE: This rule requires the adoption of local school district wellness policies.
[6.12.6.6 NMAC - N, 02-28-06]

6.12.6.7 DEFINITIONS:

A. “Coordinated school health approach” means the framework for linking health and education. The focus is healthy and successful students. There are eight interactive components of coordinated school health: health education; physical education and activity; nutrition; social and emotional well-being; healthy and safe environment; health services; staff wellness; and family, school and community involvement.

B. “Family, school and community involvement” means an integrated family, school and community approach for enhancing the health and well-being of students by establishing a district school health advisory council that has the responsibility to make recommendations to the local school board in the development or revision, implementation, and evaluation of the wellness policy.

C. “Health education” means the instructional program that provides the opportunity to motivate and assist all students to maintain and improve their health, prevent disease, and reduce health-related risk behaviors. It allows students to develop and demonstrate increasingly sophisticated health-related knowledge, attitudes, skills, and practices. It meets the content standards with benchmarks and performance standards as set forth in 6.30.2.19 NMAC.

D. “Health services” means services provided for students to appraise, protect, and promote health. These services are designed to ensure access or referral to primary health care or behavioral health services or both, foster appropriate use of primary health care services, behavioral health services, prevent and control communicable diseases and other health problems, provide emergency care for illness or injury, promote and provide optimum sanitary conditions for a safe school facility and school environment, and provide educational and counseling opportunities for promoting and maintaining individual, family, and community health.

E. “Healthy and safe environment” means the physical and aesthetic surroundings and the psychosocial climate and culture of the school. It supports a total learning experience that promotes personal growth, healthy interpersonal relationships, wellness, and freedom from discrimination and abuse.

F. “Nutrition” means programs that provide access to a variety of nutritious and appealing meals and snacks that accommodate the health and nutrition needs of all students.

G. “Physical activity” means body movement of any type which include recreational, fitness, and sport activities.

H. “Physical education” means the instructional program that provides cognitive content and learning experiences in a variety of activity areas. It provides the opportunity for all students to learn and develop the skills, knowledge and attitudes necessary to personally decide to participate in a lifetime of healthful physical activity. It meets the content standards with benchmarks and performance standards as set forth in Section 6.30.2.20 NMAC.

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I. "Social and emotional wellbeing" means services provided to maintain and/or improve students' mental, emotional, behavioral, and social health.

J. "Staff wellness" means opportunities for school staff to improve their health status through activities such as health assessments, health education and health-related fitness activities. These opportunities encourage school staff to pursue a healthy lifestyle that contributes to their improved health status, improved morale, and a greater personal commitment to the school's overall coordinated school health approach.

K. [~~"Tactical emergency response plan" means that portion of a safe school plan that details risk assessments and establishes the plans or procedures to manage an emergency event after it has occurred and includes, but is not limited to, emergency routes and staff assignments as they relate to immediate actions, delayed actions, mitigation actions, facility evacuations and facility reentry]~~ "Emergency Operation Plan (EOP)" means the document which outlines and explains functions, resources and coordination procedures for responding to and supporting crisis, emergency, terrorist-response, and disaster operations, and is that portion of a safe school plan that details risk assessments and establishes the plans or procedures to manage a crisis, emergency, terrorist or disaster event before, during and after it has occurred and includes, but is not limited to, emergency routes and staff assignments as they relate to immediate actions, delayed actions, mitigation actions, facility evacuations and facility reentry.

+--+ [6.12.6.7 NMAC - N, 02-28-06; A, 11-30-06; A, xx-xx-14]

6.12.6.8 REQUIREMENTS:

A. This section applies to local school boards, local school districts, and charter schools and governs policies to be implemented by local school districts with regards to student and school employee wellness.

B. Each school district and charter school shall develop and implement a policy that addresses student and school employee wellness through a coordinated school health approach.

C. Each school district and charter school shall submit the wellness policy to the public education department for approval.

(1) Sections of the wellness policy that meet the requirements set forth in Paragraphs (3), (4), (5), (6) and (11) of Subsection D and the requirements set forth in Subsection E of this section shall be submitted to the public education department on or before August 30, 2006.

(2) Sections of the wellness policy that meet the requirements set forth in Paragraphs (1), (2), (7), (8), (9) and (10) of Subsection D of this section shall be submitted to the public education department on or before January 30, 2007.

D. The wellness policy shall include, but shall not be limited to:

(1) a planned, sequential, K-12 health education curriculum that addresses the physical, mental, emotional, and social dimensions of health and is aligned to the health education content standards with benchmarks and performance standards as set forth in 6.30.2.19 NMAC;

(2) a planned, sequential, K-12 physical education curriculum that provides the optimal opportunity for all students to learn and develop skills, knowledge and attitudes necessary to personally decide to participate in lifetime healthful physical activity and is aligned to the physical education content standards with benchmarks and performance standards as set forth in 6.30.2.20 NMAC;

(3) guidelines to provide physical activity opportunities to students before, during and/or after school;

(4) nutrition guidelines for a la carte offerings minimally meeting guidelines set forth in Subsection B of 6.12.5.8 NMAC;

(5) guidelines for school sponsored fund raisers during the normal school hours minimally meeting guidelines set forth in Paragraph (1) of Subsection C of 6.12.5.8 NMAC;

(6) guidelines for school sponsored fund raisers before and after schools hours ensuring that at least fifty percent of the offerings shall be healthy choices in accordance with the requirements set forth in Paragraph (2) of Subsection C of 6.12.5.8 NMAC;

(7) a plan addressing the behavioral health needs of all students in the educational process by focusing on students' social and emotional wellbeing;

(8) [~~school safety plans at each school building focused on supporting healthy and safe environments and including but not necessarily limited to:~~

~~_____ (a) prevention,~~

~~_____ (b) policies and procedures, and~~

~~_____ (c) tactical emergency response plan;]~~ school safety plans at each school building focused on supporting healthy and safe learning environments; the school safety plan must be submitted to the public education

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department for approval on a three-year cycle and must include the following minimum components:

- (a) introduction;
 - (b) school policies and procedures;
 - (c) prevention; and
 - (d) a school EOP;
- (9) a plan addressing the health services needs of students in the educational process;
 - (10) a plan addressing the staff wellness needs of all school staff that minimally ensures an equitable work environment and meets the American with Disabilities Act, Part III;
 - (11) a plan for measuring implementation and evaluation of the wellness policy, including the designation of one or more persons within the school district, or at each school, as appropriate, charged with operational responsibility for ensuring that each school fulfills the district's wellness policy.

E. Family, school and community involvement. Each local board of education shall establish a district school health advisory council that consists of parent(s), school food authority personnel, school board member(s), school administrator(s), school staff; student(s); and community member(s). The school health advisory council shall have the responsibility to make recommendations to the local school board in the development or revision, implementation, and evaluation of the wellness policy consistent with this rule. The school health advisory council shall meet for this purpose a minimum of two times annually.

[6.12.6.8 NMAC - N, 02-28-06; A, 11-30-06; A, xx-xx-14]

History of 6.12.6 NMAC: [Reserved]

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 7 BULLYING PREVENTION

6.12.7.1 ISSUING AGENCY: Public Education Department
 [6.12.7.1 NMAC - N, 11-30-06]

6.12.7.2 SCOPE: ~~[All public schools, including charter schools, and state supported educational institutions]~~ Local school boards and all public schools, including charter schools.
 [6.12.7.2 NMAC - N, 11-30-06; A, xx-xx-14]

6.12.7.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Sections 22-2-1, 22-2-21 and 9-24-8 NMSA 1978.
 [6.12.7.3 NMAC - N, 11-30-06; A, xx-xx-14]

6.12.7.4 DURATION: Permanent
 [6.12.7.4 NMAC - N, 11-30-06]

6.12.7.5 EFFECTIVE DATE: November 30, 2006, unless a later date is cited at the end of a section.
 [6.12.7.5 NMAC - N, 11-30-06]

6.12.7.6 OBJECTIVE: This rule establishes requirements for ~~[districts, schools and state supported educational institutions]~~ local school boards and public schools, including charter schools, to address bullying of students by adopting and implementing policies and prevention programs.
 [6.12.7.6 NMAC - N, 11-30-06; A, x-xx-14]

6.12.7.7 DEFINITIONS:

A. "Bullying" means any repeated and pervasive written, verbal or electronic expression, physical act or gesture, or a pattern thereof, that is intended to cause distress upon one or more students in the school, on school grounds, in school vehicles, at a designated bus stop, or at school activities or sanctioned events. Bullying includes, but is not limited to, hazing, harassment, intimidation or menacing acts of a student which may, but need not be based on the student's race, color, sex, ethnicity, national origin, religion, disability, age or sexual orientation.

B. "Cyberbullying" means electronic communication that:

(1) targets a specific student;

(2) is published with the intention that the communication be seen by or disclosed to the targeted student;

(3) is in fact seen by or disclosed to the targeted student; and

(4) creates or is certain to create a hostile environment on the school campus that is so severe or pervasive as to substantially interfere with the targeted student's educational benefits, opportunities or performance.

~~[B.]~~ C. "Department" means the public education department.

~~[C.]~~ D. "Harassment" means knowingly pursuing a pattern of conduct that is intended to annoy, alarm or terrorize another person.

~~[D.]~~ E. "IDEA" means the federal Individuals with Disabilities Education Act, 20 USC Secs. 1401 and following, including future amendments.

~~[E.]~~ F. "Local school board" means the governing body of a school district ~~[or charter school].~~

G. "Public school" means a school as defined by Section 22-1-2 NMS 1978, including charter schools.

~~[F.]~~ "School district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes.

[6.12.7.7 NMAC - N, 11-30-06; A, xx-xx-14]

6.12.7.8 REQUIREMENTS:

A. This section ~~[applies to local school boards, local school districts, and charter schools and]~~ governs policies and programs to be adopted and implemented by local school ~~[districts with regards to]~~ boards addressing bullying and cyberbullying. Cyberbullying policies and programs must be in effect beginning with the 2013-2014 school year.

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B. Each ~~[school district and charter school]~~ local school board shall develop and implement a policy that addresses bullying ~~[, no later than April 1, 2007]~~ and cyberbullying. Each local school board shall make any necessary revisions to its disciplinary policies to ensure that cyberbullying is addressed in accordance with the requirements of this rule.

C. ~~[Any such]~~ The anti-bullying policy shall at least include, but shall not be limited to:

- (1) definitions;
- (2) an absolute prohibition against bullying and cyberbullying;
- (3) a method to ensure initial and annual dissemination of the anti-bullying and anti-cyberbullying policy to all students, parents, teachers, administrators and all other school or district employees;
- (4) procedures for reporting incidents of bullying and cyberbullying which ensure confidentiality to those reporting bullying or cyberbullying incidents and protection from reprisal, retaliation or false accusation against victims, witnesses or others with information regarding a bullying or cyberbullying incident;
- (5) consequences for bullying and cyberbullying which include consideration of compliance with state and federal IDEA requirements;
- (6) consequences for knowingly making false reports pursuant to the anti-bullying policy;
- (7) procedures for investigation by administration of incidents reported pursuant to the anti-bullying policy;
- (8) a requirement that teachers and other school staff report any incidents of bullying and cyberbullying; and
- (9) a requirement that anti-bullying is included as part of the health education curriculum as set forth in 6.30.2.19 NMAC (“content standards - health education”).

D. The cyberbullying prevention policy shall require that:

- (1) all licensed school employees complete training on how to recognize signs of cyberbullying;
- (2) any licensed school employee who has information about or a reasonable suspicion of cyberbullying shall report the matter immediately to either or both the school principal and the local superintendent or to the head administrator of a charter school;
- (3) any school administrator or local superintendent who receives a report of cyberbullying take immediate steps to ensure prompt investigation of the report; and
- (4) school administrators take prompt disciplinary action in response to cyberbullying confirmed through investigation; disciplinary action taken pursuant to this subsection must be by the least restrictive means necessary to address a hostile environment on the school campus resulting from the confirmed cyberbullying and may include counseling, mediation and appropriate disciplinary action that is consistent with the legal rights of the involved students.

E. Every public school shall implement a bullying and cyberbullying prevention program.

F. Every local school board shall submit to the department, as directed by the department, assurances of:

- (1) adoption and implementation of a policy addressing bullying and cyberbullying; and
- (2) review and, if necessary, revision of disciplinary policies to ensure that the policies address cyberbullying; and
- (3) implementation of cyberbullying training for all licensed school employees.

G. Every local school board and every charter school shall submit to the department, as directed by the department, assurances of implementation of bullying and cyberbullying prevention programs.

[6.12.7.8 NMAC - N, 11-30-06; A, xx-xx-14]

History of 6.12.7 NMAC: [Reserved]

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS
PART 5 OPTIONAL FULL-DAY KINDERGARTEN PROGRAM

6.30.5.1 ISSUING AGENCY: Public Education Department
[6.30.5.1 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.2 SCOPE: This rule applies to public schools receiving full-day kindergarten state funding.
[6.30.5.2 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.3 STATUTORY AUTHORITY: Subsection B of Section 22-2-1 and Subsection D of Section 9-24-8 NMSA 1978.
[6.30.5.3 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.4 DURATION: Permanent
[6.30.5.4 NMAC - N, 11-14-2000]

6.30.5.5 EFFECTIVE DATE: November 14, 2000, unless a later date is cited at the end of a section.
[6.30.5.5 NMAC - N, 11-14-2000]

6.30.5.6 OBJECTIVE: To provide program requirements for optional full-day kindergarten programs.
[6.30.5.6 NMAC - N, 11-14-2000]

6.30.5.7 DEFINITIONS:

A. “Scientifically-based reading research” is the application of rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties.

B. “Developmentally appropriate practices” result from the process of professionals making decisions about the well being and education of children based on at least three important kinds of information:

- (1) child development and learning;
- (2) strengths, interests, and needs of each individual child; and
- (3) knowledge of the social and cultural contexts in which children live.

C. “MEM” as referenced in 6.6.104.8 A. means “membership,” which is total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days. (Subsection B of Section 22-8-2 NMSA 1978).

D. “Department” means the public education department.

E. “Kindergarten entry assessment” means an assessment conducted within the first 30 calendar days of the school year.

F. “Progress monitoring” means assessments conducted between screenings on students who are receiving targeted and intensive interventions to determine whether the student is benefitting from interventions.

G. “Screening” means an assessment conducted three to four times a year for all students to assess specific skills and to identify those at risk academically.

[6.30.5.7 NMAC - N, 11-14-2000; A, xx-xx-2014]

6.30.5.8 PROGRAM ELIGIBILITY: The number of early childhood education program units is determined by multiplying the early childhood MEM by the cost differential factor 1.44. Students enrolled in full-day kindergarten programs shall be counted for 1.0 early childhood MEM (Section 22-8-19 NMSA 1978).
[6.30.5.8 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.9 STUDENT PARTICIPATION

A. A student must be at least five years of age prior to 12:01 a.m., on September 1 of that school year (Subsection M of Section 22-8-2 NMSA 1978) to participate in a full-day kindergarten program.

B. All public school districts will offer full-day kindergarten programs. Such programs will be offered to kindergarten students on a voluntary basis. No parent will be required to send his/her child to a full-day kindergarten program.

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SOURCE: NM PED

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[6.30.5.9 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.10 LENGTH OF SCHOOL DAY-MINIMUM:

~~[A. For the 2009-2010 school year, students in full-day kindergarten programs must be in school-directed programs, exclusive of lunch, for a minimum of five and one-half hours per day or nine hundred hours per year (Section 22-2-8.1 NMSA 1978).~~

~~B. For the 2010-2011 and subsequent school years, students in full-day kindergarten programs must be in school-directed programs, exclusive of lunch, for a minimum of five and one-half hours per day for a minimum of 180 school days or for a minimum of 150 school days for districts on alternative schedules (Section 22-2-8.1 NMSA 1978 and 6.10.5 NMAC).] Students in full-day kindergarten programs must comply with the minimum length of school day and school year as required in Section 22-2-8.1 NMSA 1978 and 6.10.5 NMAC.~~

[6.30.5.10 NMAC - N, 11-14-2000; A, 11-13-2009; A, xx-xx-2014]

6.30.5.11 PROGRAM ELEMENT: INSTRUCTION

- A. Public schools providing full-day kindergarten programs, utilizing state funding, will include:
- (1) a comprehensive research-based early literacy program that:
 - (a) identifies the concepts and skills necessary to establish the foundation of success in early reading;
 - (b) includes instructional strategies that ensure children learn identified concepts and skills;
 - (c) includes developmentally appropriate early literacy assessment; and
 - (d) includes key early literacy skills instruction, e.g. language development, vocabulary development, auditory comprehension, appreciation of stories and books, writing concepts of print, alphabet knowledge, letter sounds, phonemic awareness and beginning phonics;
 - (2) child-centered programs based on developmentally appropriate teaching practices that:
 - (a) support the growth of social and emotional competence; and
 - (b) are culturally and linguistically appropriate;
 - (3) a sequential comprehensive, developmentally appropriate early mathematics program that:
 - (a) identifies the concepts and skills necessary to establish the foundation of success in early mathematics;
 - (b) includes instructional strategies that ensure children learn identified concepts and skills; and
 - (c) includes developmentally appropriate early mathematics assessment.

B. Schools must continue to provide a sequential comprehensive, developmentally appropriate early literacy program in the first second and third grades following kindergarten. The program must include program elements, assessments, and professional development as addressed in the rule.

[6.30.5.11 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.12 PROGRAM ELEMENT: ASSESSMENT

A. ~~[Teachers or instructional assistants under the guidance of teachers must administer developmentally appropriate assessments reflecting the whole child to participating students.] Beginning with the 2015-2016 school year, all students in kindergarten must be administered the New Mexico kindergarten entry assessment provided by the department. Kindergarten entry assessment data must be reported through the department's data collection reporting system no later than October 1 of each school year.~~

~~B. [Teachers or instructional assistants under the guidance of teachers must administer pretests by September 30 and posttests by April 30 of each school year to assess student performance.] All students in kindergarten must be administered a department-approved screening assessment at least three times per school year to determine if students are making adequate progress toward grade level reading proficiency by the end of the school year. Screening assessment data must be reported to the department's data collection and reporting system within the first 30 instructional days of the school year. Any student identified with a reading deficiency based on the screening assessment measure must receive more frequent progress monitoring to determine if the student is on target to meet grade level expectations by the end of the school year.~~

C. Public schools districts having both half-day and full-day state-funded kindergarten programs will assess performance of all kindergarten students.

~~[D. Public school districts must submit student test data to the public education department by May 30 of each school year.]~~

[6.30.5.12 NMAC - N, 11-14-2000; A, 11-13-2009; A, xx-xx-2014]

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6.30.5.13 PROGRAM ELEMENT: PROFESSIONAL DEVELOPMENT

- A. So that schools can plan and implement comprehensive and aligned reading programs, school districts must provide professional development to teachers, teacher assistants, and principals in the areas of:
- (1) scientific-based early literacy research and its implications for instruction;
 - (2) best practices of English as a second language (ESL)/English language learner (ELL) instruction;
 - (3) the principles of peer and expert coaching;
 - (4) best practices in early mathematics instruction; and
 - (5) developmentally appropriate practice.
- B. To ensure systematic implementation of full-day kindergarten literacy readiness programs that are research-based, teachers must be provided ongoing supervision and coaching.
[6.30.5.13 NMAC - N, 11-14-2000; A, 11-13-2009]

6.30.5.14 [PROGRAM APPROVAL]

- ~~A. School districts seeking initial approval of full day kindergarten for a new school shall request public education department approval using the organization of grade levels and establishing/closing school waiver request form described in Subsection F of 6.29.1.9 NMAC.~~
- ~~B. The public education department will review all such requests for initial approval through the procedures set forth in Subsection F of 6.29.1.9 NMAC.] [RESERVED]~~
[6.30.5.14 NMAC - N, 11-14-2000; A, 11-13-2009; Repealed, xx-xx-2014]

6.30.5.15 [END OF YEAR EVALUATION]

- ~~A. Schools must provide verification to the state department of education that the kindergarten/literacy readiness program has:~~
- ~~(1) served the children identified as most in need; and~~
 - ~~(2) implemented a literacy based full day kindergarten based on the program elements described above in Subsection A of 6.30.5.11.~~
- ~~B. Upon development and implementation of a statewide full day kindergarten test data system, the public education department shall compile student test data submitted by public school districts and make an annual report to the state board of education, legislative education study committee, and the legislature.] [RESERVED]~~
[6.30.5.15 NMAC - N, 11-14-2000; A, 11-13-2009; Repealed, xx-xx-2014]

HISTORY OF 6.30.5 NMAC: [RESERVED]

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS
PART 9 PRE-KINDERGARTEN PROGRAM

6.30.9.1 ISSUING AGENCY: Public Education Department
 [6.30.9.1 NMAC - N, 1/31/2007]

6.30.9.2 SCOPE: This rule applies to all school districts, public schools, including charter schools.
 [6.30.9.2 NMAC - N, 1/31/2007]

6.30.9.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, NMSA 1978; Pre-Kindergarten Act 32A-23-1 to 32A-23-8, NMSA 1978.
 [6.30.9.3 NMAC - N, 1/31/2007]

6.30.9.4 DURATION: Permanent
 [6.30.9.4 NMAC - N, 1/31/2007]

6.30.9.5 EFFECTIVE DATE: 1/31/2007, unless a later date is cited at the end of a section.
 [6.30.9.5 NMAC - N, 1/31/2007]

6.30.9.6 OBJECTIVE: This rule seeks to implement a state funded pre-kindergarten program through the public education department and addresses collaboration with the children, youth and families department, program requirements, pre-kindergarten eligibility, requests for ~~[proposals and contracts for services]~~ applications, and administration of funds.
 [6.30.9.6 NMAC - N, 1/31/2007; A, xx/xx/2014]

6.30.9.7 DEFINITIONS:

A. "Community" means an area defined by school district boundaries, tribal boundaries or joint boundaries of a school district and tribe or any combination of school districts and tribes.

B. "CYFD" means the children, youth and families department.

C. "Department" means the public education department or PED.

D. ~~["Early childhood development specialist" means the adult responsible for working directly with four year old children in implementing pre-kindergarten services.]~~ "Early childhood licensed teacher" means the adult responsible for working directly with four-year-old children in implementing pre-kindergarten services and holding valid licensure issued by the PED in one or more of the following:

(1) licensure in early childhood education from birth through grade 3

(2) licensure in early child hood education from birth through pre-K;

(3) early childhood education pre-K through grade 3.

E. "Eligible provider" means a person licensed by the children, youth and families department that provides early childhood developmental readiness services or preschool special education, or is a public school, tribal program or head start program.

F. "Pre-kindergarten or pre-k" mean a voluntary developmental readiness program for children who have attained their fourth birthday prior to September 1.

G. "Pre-k program" means a voluntary program for the provision of pre-k services throughout the state that addresses the total developmental needs of preschool children, including physical, cognitive, social and emotional needs, and shall include health care, nutrition, safety and multicultural sensitivity.

H. ~~["Request for proposal or RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals pursuant to the Procurement Code (see 13.1.1 through 13.1.199 NMSA 1978)]~~ "Request for application or RFA" means all documents, including those attached or incorporated by reference, used for soliciting applications for pre-k programs.

I. "Tribe" means an Indian nation, tribe or pueblo located in New Mexico.
 [6.30.9.7 NMAC - N, 1/31/2007; A, xx/xx/2014]

6.30.9.8 COLLABORATION WITH CYFD: The PED shall collaborate with the CYFD in the development and implementation of a voluntary program for the provision of pre-kindergarten services throughout the state. Such collaboration shall include but not be limited to:

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- A. development and issuance of the ~~[RFP]~~ RFA;
 - B. training and technical assistance provided to pre-k program ~~[supervisors]~~ administrators and program staff;
 - C. collection of program data that is not identifiable to an individual student;
 - D. reporting to the governor and legislative committees regarding implementation and progress;
 - E. contacting the CYFD prior to recommending any changes to the Pre-Kindergarten Act or this rule.
- [6.30.9.8 NMAC - N, 1/31/2007; A, xx/xx/2014]

6.30.9.9 REQUIREMENTS: The CYFD and PED shall cooperate in the development and implementation of a voluntary program for the provision of pre-k services throughout the state. The pre-k program shall address the total developmental needs of preschool children, including physical, cognitive, social and emotional needs, and shall include health care, nutrition, safety and multicultural sensitivity. In order to implement the pre-k program, the PED shall:

- A. award program funds ~~[through an RFP process]~~ to public school districts and schools, including charter schools;
 - B. provide technical assistance to providers to ensure effectiveness;
 - C. ensure that funds shall not be used for any religious, sectarian or denominational purposes, instruction or material;
 - D. ensure communities being served are meeting eligibility requirements based on the funding criteria of the Pre-Kindergarten Act;
 - E. monitor programs for compliance with the pre-k law, rule and ~~[contract]~~ agreement to include scheduled and unscheduled visits and any necessary corrective actions; and
 - F. determine public school requirements for ~~[licensure or teaching endorsements for pre-k program early childhood development specialists and staff]~~ teacher and educational assistant licensure for pre-k programs.
- [6.30.9.9 NMAC - N, 1/31/2007; A, xx/xx/2014]

6.30.9.10 PRE-KINDERGARTEN ELIGIBILITY: Children who turn four-years old before September 1 and are not age eligible for kindergarten are eligible to participate in pre-k programs. Pre-kindergarten services may be provided by public schools on a per-child reimbursement rate in communities with public elementary schools that are designated as Title I schools.

[6.30.9.10 NMAC - N, 1/31/2007; A, xx/xx/2014]

6.30.9.11 REQUESTS FOR ~~[PROPOSALS AND CONTRACTS]~~ APPLICATIONS AND AGREEMENTS FOR PRE-K SERVICES: The PED shall:

- A. issue ~~[an RFP]~~ a RFA for pre-k services to serve eligible four-year-old children through public school programs and charter schools;
- B. ensure that the proposal contains a detailed description of the services that are to be provided, including:
 - (1) how those services shall meet pre-k program standards;
 - (2) the number of four-year-old children that shall be served;
 - (3) a description of the facilities along with site and floor plans;
 - (4) additional revenue sources and funding amounts available for the pre-k program;
 - (5) a description of the qualifications and experience of the early childhood ~~[development specialists]~~ licensed teacher for each site;
 - (6) the plan for communicating with and involving parents in the program;
 - (7) how program services meet the continuum of services to children; and
 - (8) any other relevant information requested by the department.
- C. for funding purposes, ensure that at least 66% of the children served live within the attendance zone of a Title I elementary school.

[6.30.9.11 NMAC - N, 1/31/2007; A, xx/xx/2014]

HISTORY OF 6.30.9 NMAC: [RESERVED]

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS
PART 12 K-3 PLUS PROGRAM

6.30.12.1 ISSUING AGENCY: Public Education Department
 [6.30.12.1 NMAC - N, xx/xx/2014]

6.30.12.2 SCOPE: This rule applies to all school districts, public schools, including charter schools.
 [6.30.12.2 NMAC - N, xx/xx/2014]

6.30.12.3 STATUTORY AUTHORITY: Sections 9-24-8(D) and 22-13-28 NMSA 1978.
 [6.30.12.3 NMAC - N, xx/xx/2014]

6.30.12.4 DURATION: Permanent
 [6.30.12.4 NMAC - N, xx/xx/2014]

6.30.12.5 EFFECTIVE DATE: xx/xx/2014, unless a later date is cited at the end of a section.
 [6.30.12.5 NMAC - N, xx/xx/2014]

6.30.12.6 OBJECTIVE: This rule provides K-3 plus program application requirements and procedures and criteria for evaluating applications.
 [6.30.12.6 NMAC - N, xx/xx/2014]

6.30.12.7 DEFINITIONS:

A. “Award period” means the period of at least 25 additional instructional days provided through the K-3 plus program after the close of one school year and prior to the beginning of the following school year.

B. “Department” means the public education department or PED.

C. “Enrollment” means the total number of students in a K-3 plus program who are enrolled on the fifteenth instructional day of the program.

D. “Evidence-based or research-based scientific reading strategies and programs” mean instructional strategies and reading programs that apply rigorous, systematic, and objective procedures to obtain valid knowledge relevant to reading development, reading instruction, and reading difficulties.

E. “High-poverty public schools” means for the purpose of the K-3 plus program, a public school, including a charter school, in which 80% or more of the students are eligible for free or reduced-fee lunch at the time the public school applies for the K-3 plus program or an elementary school with a D or F grade the previous year as determined in accordance with the A-B-C-D-F Schools Rating Act (Sections 22-2E-1 through 22-2E-4 NMSA 1978) and 6.19.8 NMAC.

F. “Initial unit value” means that unit value established by the department for the purpose of developing school district and charter school budgets for the next succeeding fiscal year.

G. “K-3 plus program” means a voluntary program for additional educational time for approved full-day kindergarten and grades one through three students extending the school year at least 25 additional instructional days in literacy and numeracy beginning up to two months earlier than the regular school year.

H. “Progress monitoring” means assessments conducted between screenings on students who are receiving targeted and intensive interventions to determine whether the student is benefitting from interventions.

I. “Regular school year” means the district calendar of a minimum of 180 school days or for a minimum of 150 school days for districts on alternative schedules (Section 22-2-8.1 NMSA 1978 and 6.10.5 NMAC).

J. “Request for application or RFA” means all documents, including those attached or incorporated by reference, used for soliciting applications pursuant to the Procurement Code (Section 13-1-1 through 13-1-199 NMSA 1978).

K. “Screening assessment” means an assessment conducted three to four times a year for all students to assess specific skills and to identify those at risk academically.

[6.30.12.7 NMAC - N, xx/xx/2014]

6.30.12.8 PROGRAM ELIGIBILITY: High poverty public schools are eligible to provide the K-3 plus program for approved full-day kindergarten and grades one through three students. (Section 22-13-28 NMSA 1978).

[6.30.12.9 NMAC - N, x/xx/2014]

6.30.12.10 PROGRAM ELEMENT - INSTRUCTION:

A. K-3 plus programs must include:

(1) a daily classroom schedule with at least ninety (90) minutes of literacy instruction provided for kindergarten students and at least one hundred and twenty (120) minutes of literacy instruction provided for students in grades one through three including time for all students to practice independent reading; Instruction and intervention must be provided to students based on assessment data to guide instruction to meet student needs;

(2) a comprehensive research-based early literacy core basal reading program or intervention in alignment with the English language arts common core state standards published by the national governor's association center for best practices and the council of chief state school officers and incorporated by reference in 6.29.13 NMAC that:

(a) identifies the concepts and skills necessary to establish the foundation of success in early reading;

(b) includes instructional strategies that ensure children learn identified concepts and skills;

(d) includes key early literacy skills instruction including but not limited to phonological awareness, phonics, reading fluency, vocabulary, comprehension, and writing to support comprehension;

(3) a sequential comprehensive, developmentally appropriate early mathematics program with at least ninety (90) minutes of instruction provided for students in grades kindergarten through three in alignment with the mathematics common core state standards published by the national governor's association center for best practices and the council of chief state school officers and incorporated by reference in 6.29.14 NMAC that:

(a) identifies the concepts and skills necessary to establish the foundation of success in early mathematics; and

(b) includes instructional strategies that ensure children learn identified concepts and skills; and

(4) implementation of the department's response to intervention (RTI) framework known as *The Three-Tier Model of Student Intervention* in reading and math. The state guidance manual, *The Student Assistance Team and the Three-Tier Model of Student Intervention* shall be the guiding document for districts and schools to use in the implementation of student intervention for academics and behavior for each tier of RTI. (Subsection D 6.29.1.9 NMAC).

B. Schools must provide intervention services in literacy and numeracy for students enrolled in the K-3 Plus program who are not meeting grade level requirements.

[6.30.12.10 NMAC - N, xx/xx/2014]

6.30.12.11 PROGRAM ELEMENT - ASSESSMENT:

A. Math and literacy assessments in accordance with the requirements of this section must be administered to students participating in the K-3 plus program at the following times:

(1) beginning of the K-3 plus program;

(2) beginning of the school year;

(3) mid-point of the school year; and

(4) end of the school year.

B. K-3 plus schools must administer a standardized assessment in literacy, approved and provided by the department, that measures the acquisition of reading skills including phonological awareness, phonics, reading fluency, vocabulary and comprehension.

(1) The assessment will include screening, progress monitoring, and end of year measures to assist teachers in planning and providing instruction to meet student needs.

(2) In addition to the assessments required by subsection A of this section, the literacy assessment must be administered during the course of the 25 days of K-3 plus.

[6.30.12.11 NMAC - N, xx/xx/2014]

6.30.12.12 PROGRAM ELEMENT - PROFESSIONAL DEVELOPMENT:

A. The department will provide professional development to K-3 Plus teachers in the areas of:

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(1) scientific-based early literacy research and its implications for instruction for phonological awareness, phonics, spelling, reading fluency, vocabulary, comprehension, and writing to support comprehension in kindergarten and grades one through three;

(2) best practices of English as a second language (ESL)/English language learner (ELL) instruction; and

(3) best practices in early mathematics instruction.

B. To support successful implementation of K-3 plus programs the department will develop and disseminate information on best practices in the areas of student recruitment, retention and academic success of early learners. (Section 22-13-28 NMSA 1978)

[6.30.12.12 NMAC - N, xx/xx/2014]

6.30.12.13 APPLICATION AND REVIEW PROCESS:

A. School districts seeking approval for a K-3 plus program for schools shall request department approval through completion and submission of a request for application (RFA) for a June/July/August K-3 plus program.

B. The department will review all such requests for approval and shall grant priority to those schools with evidence-based, scientific reading strategies and programs.

C. The applicant must demonstrate that its K-3 plus program will meet all department standards and employ only qualified teachers and other staff.

D. The department shall notify all schools and charter schools by February 1 that applications will be accepted until March 15 and that final funding is contingent on the initial unit value set by the secretary. The notification shall include the application and any requirements for supplementary documentation.

E. Schools that are awarded funding for K-3 plus for the next school year shall be notified by April 15 of the calendar year.

[6.30.12.13 NMAC - N, xx/xx/2014]

6.30.12.14 FUNDING:

A. K-3 plus shall be administered by the department and shall provide the funding for approved full-day kindergarten and grades one through three to be extended by at least 25 instructional days, beginning up to two (2) months earlier than the regular school years. The 25 instructional days must at least equal the total number of hours produced by multiplying the required hours per day as established in Paragraphs (1) and (2) of Subsection A of Section 22-2-8.1 NMSA 1978 by 25.

B. The department will provide notification of application approval by award letter to the district/charter school by April 15.

C. K-3 plus programs shall be funded for each student reported based on no less than thirty percent (30%) of the initial unit value for 1.0 program unit. Final funding is based on the number of students enrolled on the fifteenth day as identified in the student teacher accountability reporting system (STARS) and who have been in attendance for at least ten (10) days of the K-3 plus program.

D. All K-3 Plus program funds shall be paid on a reimbursement basis. Services will be reimbursed once delivered and reimbursement is requested by districts/charter schools.

E. Funding granted under the K-3 plus application must be expended and all RfR be submitted by December 31, of the fiscal year in which the program is conducted. For those schools under an alternative schedule or as agreed upon by the PED will have funds expended and all RfR submitted by June 30 of the fiscal year.

F. K-3 plus program funding may be used to support the following but may not be used to supplant funds designated for year-round expenses:

(1) teacher salaries including instructional coaches, interventionists, and other staff paid at the same district rate and under the same terms as for regular education programs;

(2) educational assistant salaries paid at the same district rate and under the same terms as for regular education programs;

(3) supplies and materials to support extending the instructional program including research-based intervention programs for literacy and numeracy;

(4) recruitment activities and incentives for attendance; up to two percent (2%) of the funds received by a school district or charter school shall be used for student recruitment and to ensure regular attendance by K-3 plus students. (Section 22-13-28 NMSA 1978)

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G. The cost of salaries and benefits incurred for any persons serving other programs simultaneous to the K-3 plus program will be cost allocated appropriately and the allocation plan submitted for approval as part of the application:

H. K-3 plus programming for students with disabilities should be paid for by K-3 Plus funds. Additional services as required by the individualized education program (IEP) can be paid for by the district special education budget. School districts must meet the maintenance of effort (MOE) requirements at 34 CFR Sec. 300.203, of the Individuals with Disabilities Education Act (IDEA) regulations. The expenditure levels for special education and related services must be maintained or must exceed the previous year, unless a district has allowable exceptions under 34 CFR Sec. 300.204 or is allowed to reduce MOE pursuant to 34 CFR Sec. 300.205. School districts can only use IDEA funds for the excess cost of providing special education and related services for students with disabilities.

I. Funding in any subsequent award period will be subject to appropriation by the New Mexico legislature.

[6.30.12.14 NMAC - N, xx/xx/2014]

6.30.12.15 EVALUATION AND REPORTING:

A. Schools must comply with annual and interim reports as required by the department for student and program assessments. This may require input of assessment data into the department's data collection and reporting system. Assessment information will be required in report format to include demographic data. The department may request additional information regarding staffing, endorsements, and licensure levels, program elements, class roster reports, professional development activities, parent involvement activities, implementation successes and challenges, and suggested modifications.

B. All students participating in K-3 plus must be reported to the department through the department's data collection and reporting system. Required fields will include the following:

- (1) demographic information;
- (2) services rendered under the Rtl framework;
- (3) assigned teacher; and
- (4) number of years students have participated in the K-3 plus program.

C. Site monitoring visits by the department or by evaluators designated by the department will be conducted.

D. The department shall report annually to the legislature and the governor on the efficacy of K-3 Plus program. (Section 22-13-28 NMSA 1978)

[6.30.12.15 NMAC - N, xx/xx/2014]

HISTORY OF 6.30.12 NMAC: [RESERVED]