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June 25, 2015

MEMORANDUM

TO: Legislative Education Study Committee

FR: Kevin Force

RE: STAFF BRIEF: ADMINISTRATIVE RULEMAKING

Proposed Rules

- **6.30.5 NMAC, Optional Full-Day Kindergarten Program**
- **6.32.3 NMAC, Seal of Bilingualism-Biliteracy on New Mexico Diploma of Excellence**

6.30.5 NMAC, Optional Full-Day Kindergarten Program

In the May 29, 2015 issue, the Public Education Department (PED) published in the *New Mexico Register* a Notice of Proposed Rulemaking, introducing one minor amendment to the rules regarding the Optional Full-Day Kindergarten Program. The Notice solicited public comment on the rule, and announced a public hearing on the proposed rulemaking, to be held on June 29, 2015 in Mabry Hall of the Jerry Apodaca Education Building in Santa Fe. (See **Attachment 1, PED NPRM, Optional Full-Day Kindergarten, 5/29/15**, and **Attachment 2, Proposed Rule 6.30.5 Optional Full-Day Kindergarten, 5/29/15**.)

This rulemaking proposes one simple amendment to the rule that is likely to have little substantive effect. PED proposes to change the defined term “screening” to the new term “interim assessment,” both of which mean, “[A]n assessment conducted three to four times a year for all students to assess specific skills and to identify those at risk academically.” The rulemaking would strike “screening” in favor of “interim assessment.”

6.32.3 NMAC, Seal of Bilingualism-Biliteracy on New Mexico Diploma of Excellence

In the June 16, 2015 issue, PED published in the *Register* a Notice of Proposed Rulemaking introducing a new rule for the administration of the Bilingualism-Biliteracy Seal on New Mexico diplomas of excellence. The Notice solicited comments on the rule, and announced a public hearing on the rulemaking, to be held July 20, 2015 in Mabry Hall of the Jerry Apodaca Education Building in Santa Fe. (See **Attachment 3, PED NPRM, Seal of Bilingualism 6/16/15**, and **Attachment 4, Proposed New Rule, Seal of Bilingualism 6/16/15**.)

The rulemaking cites as statutory authority:

- Section 22-1-9.1 NMSA 1978, “New Mexico diploma of excellence; state seal for bilingual and biliterate graduates,” which was enacted in the 2014 Regular Legislative Session, as Laws 2014, Ch. 46;
- Section 22-2-1 NMSA 1978, “Secretary and department; general powers”; and
- Section 9-24-8(D) NMSA 1978, “Secretary; duties and general powers,” specifically regarding the secretary’s rulemaking authority.

The rule’s objective is to establish criteria for students to earn a state seal of bilingualism on a New Mexico diploma of excellence, certifying that the recipient is proficient in a world language other than English for meaningful use in college, career, or response to local community need.

This rule proposes several new definitions, including:

- “academic language,” which means the language used in academic content in formal schooling contexts, including specialized or technical language and discourse related to each content area;
- “Expressive language,” which means communicating meaning through oral, signed, and written language, when appropriate;
- “Proficiency,” which means the ability to express oneself in a language with sufficient structural accuracy and vocabulary to participate effectively in most social and academic situations;
- “Receptive language,” which means the processing of language through listening and reading, when appropriate; and
- “World language,” which is used to distinguish English from languages other than English.

The proposed rule also includes certain proficiency requirements that must be established in order to earn the bilingualism seal, including completion of graduation requirements and demonstration of proficiency in a language other than English, by:

- certification by an individual tribe that a student is proficient in the tribal language;
- units of credit and an assessment;
- units of credit and an alternative process portfolio; or
- an assessment and an alternative process portfolio.

Finally, the rule proposes to require that the graduate’s high school transcript indicate that the graduating student earned the bilingualism seal on the New Mexico diploma of excellence.

PED NPRM Optional Full-Day Kindergarten, 5/29/15
New Mexico Register / Volume XXVI, Issue 10 / May 29, 2015

ATTACHMENT 1

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, June 29, 2015, from 9:00 a.m. to 11:00 a.m.. The purpose of the public hearing will be to obtain input on the proposed amendments to 6.30.5 NMAC (Optional Full-Day Kindergarten).

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.

Proposed Rule 6.30.5 Optional Full-Day Kindergarten, 5/29/15

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. “Interim 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.

~~[E.]~~**F.** “Kindergarten entry assessment” means an assessment conducted within the first 30 ~~[calendar]~~ instructional days of the school year.

~~[F.]~~**G.** “Progress monitoring” means assessments conducted between ~~[screenings]~~ interim assessments 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, 06-13-2014; A, xx-xx-2015]

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.

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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.

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

6.30.5.10 LENGTH OF SCHOOL DAY-MINIMUM: 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, 06-13-2014]

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. Beginning with the 2016-2017 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 [4] 15 of each school year.

B. All students in kindergarten must be administered a department-approved [screening] interim 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] Interim 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] interim 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.

[6.30.5.12 NMAC - N, 11-14-2000; A, 11-13-2009; A, 06-13-2014; A, xx-xx-2015]

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;

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- instruction;
- (2) best practices of English as a second language (ESL)/English language learner (ELL)
 - (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 [RESERVED]

[6.30.5.14 NMAC - N, 11-14-2000; A, 11-13-2009; Repealed, 06-13-2014]

6.30.5.15 [RESERVED]

[6.30.5.15 NMAC - N, 11-14-2000; A, 11-13-2009; Repealed, 06-13-2014]

HISTORY OF 6.30.5 NMAC: [RESERVED]

PED NPRM Seal of Bilingualism, 6/16/15
New Mexico Register / Volume XXVI, Issue 11 / June 16, 2015

ATTACHMENT 3

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, July 20, 2015 from 1:00 p.m. to 3:00 p.m.. The purpose of the public hearing will be to obtain input on the proposed new rule 6.32.3 NMAC (SEAL OF BILINGUALISM-BILITERACY ON NEW MEXICO DIPLOMA OF EXCELLENCE).

Interested individuals may provide comments at the public hearing and/or submit written comments to Dr. Icela Pelayo, Director, Bilingual Multicultural Education Bureau, via email at rule.feedback@state.nm.us, fax (505) 827-6725, or directed to Dr. Icela Pelayo, Director, Bilingual Multicultural Education Bureau, Public Education Department, Jerry Apodaca Public 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 (<http://ped.state.nm.us/>) under the “Public Notices” link, or obtained from Ms. Kirsi Laine, Bilingual Multicultural Education Specialist, by calling (505) 827-6505.

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. Laine at (505) 827-6505 as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

Proposed New Rule, Seal of Bilingualism, 6/16/15

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 32 EDUCATIONAL STANDARDS – BILINGUAL MULTICULTURAL EDUCATION
PART 3 SEAL OF BILINGUALISM-BILITERACY ON NEW MEXICO DIPLOMA OF EXCELLENCE

6.32.3.1 ISSUING AGENCY: Public Education Department
 [6.32.3.1 NMAC - N, xx-xx-15]

6.32.3.2 SCOPE: Local school boards and governing bodies of state-chartered schools.
 [6.32.3.2 NMAC - N, xx-xx-15]

6.32.3.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Sections 22-1-9.1, 22-2-1 and 9-24-8(D) NMSA 1978.
 [6.32.3.3 NMAC - N, xx-xx-15]

6.32.3.4 DURATION: Permanent
 [6.32.3.4 NMAC - N, xx-xx-15]

6.32.3.5 EFFECTIVE DATE: [Month] [Date], 2015, unless a later date is cited at the end of a section.
 [6.32.3.5 NMAC - N, xx-xx-15]

6.32.3.6 OBJECTIVE: This rule establishes the criteria for students to earn a state seal of bilingualism-biliteracy on a New Mexico diploma of excellence. The state seal of bilingualism-biliteracy certifies that the recipient is proficient for meaningful use in college, a career or to meet a local community language need in a world language other than English.
 [6.32.3.6 NMAC - N, xx-xx-15]

6.32.3.7 DEFINITIONS:

A. "Academic language" means the language used in academic content in formal schooling contexts, including specialized or technical language and discourse related to each content area.

B. "English language learner" means a student whose first or heritage language is not English and who is unable to read, write, speak, or understand English at a level comparable to grade-level English proficient peers and native English speakers.

C. "Expressive language" means communicating meaning through oral, signed, and written language, when appropriate.

D. "Language other than English" is any language other than English, including world languages.

E. "Proficiency" means able to express oneself in a language with sufficient structural accuracy and vocabulary to participate effectively in most social and academic situations.

F. "Receptive language" means the processing of language through listening and reading, when appropriate.

G. "World language" is used to distinguish English from languages other than English.
 [6.32.3.7 NMAC - N, xx-xx-15]

6.32.3.8 PROFICIENCY REQUIREMENTS:

A. To earn the bilingualism biliteracy seal on the diploma of excellence, students must meet the graduation requirements as specified in Subsection J of 6.29.1.9 NMAC, and demonstrate proficiency in a language other than English, through one of the following methods:

- (1) certification by an individual tribe;
- (2) units of credit and an assessment;
- (3) units of credit and an alternative process portfolio; or
- (4) an assessment and an alternative process portfolio.

B. Certification by an individual tribe. A tribe may certify that a student is proficient in the tribal language. Tribes will develop the methods and processes for determining proficiency in their respective tribal languages.

C. Units of credit and assessments option. A student may demonstrate proficiency by meeting the units of credit and assessment requirements.

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(1) The student must receive a grade of C or higher in four units of credit in a language other than English, including content courses taught in a language other than English, English language arts or English as a second language for English language learners. All four units of credit must be in the same language and shall consist of language courses, language arts courses, content area courses or any combination thereof; and

(2) The student must meet the assessment of proficiency requirement as follows:

(a) the student must attain a score of three or higher on an advanced placement examination for a language other than English; or

(b) the student must attain a score of four or higher on an international baccalaureate examination for a higher-level language other than English course; or

(c) the student must score proficient on a national assessment of language proficiency in a language other than English; or

(d) if the student is classified as an English language learner, the student may demonstrate proficiency by passing a New Mexico assessment in a world language other than English.

D. Units of credit and alternative process portfolio option. A student may demonstrate proficiency by meeting the units of credit and alternative process portfolio option requirements.

(1) The student must receive a grade of C or higher in four units of credit in a language other than English, including content courses taught in a language other than English, English language arts or English as a second language for English language learners. All four units of credit must be in the same language and shall consist of language courses, language arts courses, content area courses or any combination thereof; and

(2) The student must create a portfolio comprised of the following: a presentation, an interview with a panel composed of three or more members of the district's education staff and community, and a student-produced work sample, written when appropriate. Districts shall ensure that the alternative portfolio option includes both the receptive and expressive aspects of the language other than English.

E. Assessment and alternative process portfolio option. A student may demonstrate proficiency by meeting both the assessment and alternative process portfolio option requirements.

(1) The student must meet the assessment of proficiency requirement as follows:

(a) the student must attain a score of three or higher on an advanced placement examination for a language other than English; or

(b) the student must attain a score of four or higher on an international baccalaureate examination for a higher-level language other than English course; or

(c) the student must score proficient on a national assessment of language proficiency in a language other than English; or

(d) if the student is classified as an English language learner, the student may demonstrate proficiency by passing a New Mexico assessment in a world language other than English.

(2) The student must create a portfolio comprised of the following: a presentation, an interview with a panel composed of three or more members of the district's education staff and community, and a student-produced work sample, written when appropriate. Districts shall ensure that the alternative portfolio option includes both the receptive and expressive aspects of the language other than English.

[6.32.3.8 NMAC - N, xx-xx-15]

6.32.3.9 TRANSCRIPT: The graduate's high school transcript must also indicate that the graduate received the state seal on the graduate's New Mexico diploma of excellence.

[6.32.3.9 NMAC - N, xx-xx-15]

HISTORY OF 6.32.3 NMAC: [Reserved]