

### Emergency Rule Abstract

1. **Agency:** Public Education Department
2. **Rule Citation:** 6.30.12 NMAC, K-5 Plus Program
3. **Rulemaking Action:** Repeal and Replace
4. **Effective Date:** June 14, 2019
5. **Specific Legal Authority:** Section 22-1-2 NMSA 1978
6. **Purpose of Rule:** To provide criteria for the development and implementation of the K-5 plus program in order to maximize successful outcomes and to facilitate the transition from the K-3 Plus Act to the K-5 Plus Act.
7. **How Information on the Rule Can Be Obtained:** <https://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/> or from John Sena at (505) 570-7816.
8. **Notice and Hearing:** A public comment period and a public hearing, pursuant to Section 14-4-5.3 NMSA 1978, State Rules Act, Public Participation, Comments, and Rule Hearings, will be held in order to adopt a permanent rule within 180 days of June 14, 2019, the effective date for 6.30.12 NMAC, pursuant to Section 14-4-5.6 NMSA 1978.

## Summary of Emergency Rule

On June 11, 2019, the Public Education Department (PED) gave notice it had adopted emergency rules to repeal and replace 6.30.12 NMAC in response to Laws 2019, Chapter 206 (Senate Bill 1) and Laws 2019, Chapter 207 (House Bill 5), which repealed sections of the Public School Code that governed the K-3 Plus extended school year program and created a new K-5 Plus Act. The laws came into effect June 14, 2019 and must be applied to summer 2019 K-5 Plus programs. See **Attachment 1, Notice of Emergency Rulemaking and Emergency Rule 6.30.12 NMAC, K-5 Plus Program** and **Attachment 2, Laws 2019, Chapter 207**. The adopted emergency rule establishes general requirements for K-5 Plus program development and implementation, including: program eligibility, instruction, assessment, professional development, the application and review process, funding mechanisms, and evaluation and reporting and auditing. The notice of emergency rulemaking cites Section 22-2-1 NMSA 1978 as authority for enacting the emergency rule, which grants the PED secretary the authority to adopt, promulgate, and enforce rules. SB1 and HB5 also require PED to issue rules for the development and implementation of K-5 Plus programs, but the rulemaking does not cite this section in its statutory authority.

## Justification for Emergency Rule

PED asserts in the notice of emergency rulemaking that following the non-emergency rulemaking process in enacting K-5 Plus program rules causes imminent peril to the public health, safety, and welfare. However, PED did not provide a detailed justification for that finding before issuing the emergency rule, as required by Subsection B of Section 14-4-5.6 NMSA 1978. Further, this finding and its justification are required to be “provided to the public” before an agency issues a rule, yet in this instance, the finding was released at the same time as the issuance of the rule, June 11, 2019.

Subsection B of Section 14-4-5.6 NMSA 1978 states, “The agency shall provide to the public a record of any finding pursuant to Subsection A of this section and a detailed justification for that finding before issuing an emergency rule. The record shall include a statement that the emergency rule is temporary. After such record has been provided to the public, the agency may issue the emergency rule immediately without a public rule hearing or with any abbreviated notice and hearing that if finds practical.”

Without a detailed justification, it is unclear why following the non-emergency rulemaking process would cause imminent peril to the public health, safety, and welfare. However, the changes to the K-5 Plus program included in SB1 and HB5 were, by design, required to be implemented within a short period of time. SB1 and HB5 were enacted in response to the district court’s decision in the consolidated *Martinez* and *Yazzie* lawsuits, which required the Legislature to take immediate steps no later than April 15, 2019. In their analysis of HB5, PED noted that the short time frame for implementing the K-5 Plus program was problematic, and asked that “any funding formula changes be given at least a year to develop and implement to ensure that the provisions are implemented with fidelity... given the size and scope of the changes [in HB5], a fiscal year may be too short of a time frame for implementation.”

## Analysis

The adopted rule provides criteria for the development and implementation of the K-5 plus program to maximize successful outcomes and to facilitate the transition from the K-3 Plus statute to the K-5 Plus Act. PED defines development and implementation as assisting school districts and charter schools as they build capacity to offer K-5 Plus programs, as well as assessing and evaluating K-5 plus programs. Despite some substantive changes, such as extending grade level eligibility, the adopted rule also retains some components of the repealed K-3 Plus program rule. See **Attachment 3, 6.30.12 NMAC, K-3 Plus Program**.

### Overview of the Adopted Rule

***Program Development and Implementation.*** Under the adopted rule, PED is required to support schools in their capacity building to increase participation in the K-5 Plus program. The rule states that capacity building includes professional development, curriculum development, teacher recruitment, parent and family outreach, assessment, and program design and evaluation. However, the rule does not specify how PED will assist schools with these program elements.

***Program Eligibility.*** As required by the K-5 Plus Act, the rule stipulates that a K-5 Plus school must do the following:

- Provide 25 or more instructional days of K-5 plus programming prior to the start of the regular school year;
- Keep students that participate in the K-5 plus program with the same teacher and cohort of students for the following school year;
- Provide K-5 plus teachers additional professional development on how young children learn to read; and
- Implement the program school-wide.

However, the rule also attempts to provide flexibility from the second requirement – to keep students with the same teacher and cohort of students for the following school year. The rule states that schools can have up to two teachers who do not meet this requirement and still implement the program, as long as the schools pay for these teachers’ salaries and professional development, and that the rest of the K-5 programming elements are delivered. The rule also states that temporary flexibility may be granted to ensure sustainable programs.

***Program Element – Instruction.*** K-5 plus program elements were not substantially altered from the K-3 plus program elements. The adopted rule defines K-5 plus program elements for kindergarten through fifth grade as including time for independent reading; instruction and intervention based on screening assessment data; a comprehensive evidence-based early literacy core basal reading program; a sequential comprehensive, developmentally appropriate early mathematics program; and implementation of PED’s multi-layered system of support. As in the repealed K-3 plus rule, the adopted rule specifies that schools must provide intervention services for students who are not meeting grade level requirements.

At LESC’s May meeting, PED reported their assessment task force recently issued a request for proposals (RFP) for a comprehensive assessment system for the state, including a screening assessment for student literacy that diagnoses the acquisition of reading skills, including phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency.

***Program Element – Assessment.*** Similar to the K-3 plus program, the adopted rule requires schools to administer a screening assessment for student literacy. However, the adopted rule adds language requiring a common screening assessment, indicating PED will adopt a K-5 plus assessment for all participating schools. Also, the adopted rule requires the common screening to be administered at the end of the K-5 plus program in addition to the already existing requirements to assess students at the beginning of the K-5 plus program, the beginning of the regular school year, the middle of the regular school year, and the end of the regular school year.

***Professional Development.*** The requirements for professional development also remain largely the same, with the exception of new requirements for PED. The adopted rule requires PED to develop and disseminate information on best practices in the areas of professional development, curriculum development, teacher recruitment, parent and family outreach, assessment, and program design.

***Application and Review Process.*** As established by the K-5 Plus Act, the rule provides priority for low-performing elementary schools and schools that participated in the 2018 K-3 Plus program or K-5 Plus pilot program. The K-5 Plus Act also gave PED authority to establish additional criteria by rule. The rule states that while all schools are eligible to apply for the K-5 plus program, priority will be given to high priority schools, defined as a public school:

- That is a low-performing elementary school;
- That participated in K-3 plus or K-5 plus programs in the most recent school year;
- That is identified as a comprehensive support and improvement school; or
- That is identified as a targeted support and improvement school.

Application deadlines for the K-5 plus program are different than previous deadlines for the K-3 plus program, in alignment with the K-5 Plus Act. Schools that wish to apply for a new K-5 plus program for the next fiscal year must submit the actual number of students who participated in its K-5 plus program in the current calendar year and an estimate of the number of students expected to participate in the next calendar year to PED by October 15. PED is required to notify the Legislature of the number of students participating in K-5 plus programs in the current school year and the projected number of students expected to participate in the next school year by November 15. This will be good for budget building in future years.

***Funding Mechanisms.*** Pursuant to the K-5 Plus Act, funding for individual K-5 plus programs will be calculated based on the approved number of students in attendance based on a date prescribed by the department – which is undefined in the adopted rule – multiplied by the cost differential factor of 0.3.

***Evaluation and Reporting and Auditing.*** Schools are still required to report student information to PED through the department’s data collection and reporting system – Student Teacher Accountability Reporting System (STAR) – and two new fields have been added to the list: daily attendance and services rendered under the multi-layered system of support.

Required STAR fields include the following:

- Daily attendance;
- Demographic information;
- Services rendered under the multi-layered system of support;
- Assigned teacher; and
- Number of years the student has participated in the K-5 plus program.

The adopted rule requires PED to establish a K-5 plus advisory committee composed of representatives of school districts and charter schools that participate in the K-5 plus program, the Legislative Education Study Committee (LESC), the Legislative Finance Committee, and other stakeholders – a new requirement – and requires that the committee meet twice a year. The advisory committee is a new requirement.

## Technical Issues

The adopted rulemaking contains several technical issues in addition to PED’s failure to offer any detailed justification for the finding of an emergency, as noted above. There are some pervasive issues like grammar throughout, and other language issues such as the use of “will” instead of “shall.” There are some terms that need to be defined – such as “a low-performing elementary school” – and also some definitions that need to be removed because they are already defined in the public school code – such as “secretary.” Also, some definitions need to be revisited, such as “instructional day,” which includes a definition for seventh through twelfth grade, grades which are unable to participate in K-5 Plus.

Some of these issues may be addressed when PED adopts a permanent rule governing K-5 Plus programs. LESL staff has been working with PED on the technical issues noted in this rulemaking report. There are more substantive

technical issues in the program eligibility and funding mechanism sections. In addition to those listed above, staff have noted other, minor technical issues to discuss with the department.

### Overview of Technical Issues by Section

***Program Eligibility.*** The adopted rule’s definition of “K-5 plus program” in Subsection E of 6.30.12.7 NMAC limits K-5 plus participation to approved full-day kindergarten classes and classes in grades one through five, while Subsection A of Section 3 of Laws 2019, Chapter 207 limits K-5 plus participation to elementary schools – some of which include sixth grade. Legislative intent was to include all grade levels at a participating elementary school in the K-5 plus program, including sixth grade students.

It appears that PED is attempting to provide flexibility to schools that are unable to keep all of their students with the same K-5 Plus teacher and cohort given the language in Subsection B of 6.30.12.9 NMAC. Subsection B states schools shall pay for a teacher’s salary and professional development in the event a school cannot keep their K-5 Plus students with the same teacher and cohort of students during the following regular school year so long as the remaining K-5 Plus elements are delivered. Subsection B goes on to state that this option is only available to two teachers per school. Based on this provision and its placement in the “Program Eligibility” section, it appears PED will not approve a K-5 Plus program in a school if there are more than two cohorts of students that are not kept with their same teacher and cohort during the following school year; however, it may be more appropriate for PED to view this as a MEM reporting issue rather than prohibiting a school district from seeking any funding for K-5 Plus if they have more than two classrooms that cannot be kept with their same teacher and cohort of students, which could further discourage school districts from participating in the program. For example, PED could be more explicit in the rule and establish that MEM will only be funded if they are kept with the same K-5 Plus teacher and cohort of students during the following school year, which would allow schools to figure out how to fund participation in classrooms that they cannot keep the students with the same K-5 Plus teacher and cohort.

It is unclear if statute allows PED to provide this flexibility. K-5 Plus funding is noncategorical. According to Subsection B of Section 22-8-18 NMSA 1978, “... funds generated under the Public School Finance Act are discretionary to local school boards and governing bodies of charter schools...” which means PED cannot stipulate that all funding appropriated for K-5 Plus must be spent on K-5 Plus programming. However, Subsection C of 6.30.12.9 further states, “Temporary flexibility may be granted to ensure sustainable programs.” This should be rewritten in an active voice to specify how PED will grant this flexibility, for example, specifying for which provisions PED will issue waivers. A waiver process provides for easier tracking and reporting, and takes the subjectivity out of deciding which circumstances warrant a waiver.

***Funding Mechanisms.*** The adopted rule states that funding for K-5 plus programs will be calculated based on the approved number of students in attendance on a date

prescribed by the department, but does not specify a date. This date should be specified in rule.

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### NOTICE OF EMERGENCY RULEMAKING

**Public Notice.** The New Mexico Public Education Department (PED) gives notice that on 5/30/2019 it adopted 6.30.12 NMAC, K-5 PLUS PROGRAM as an emergency rule adoption. The repeal and replace to 6.30.12 NMAC is in response to new statute, K-5 Plus Act. The repeal and replace to 6.30.12 NMAC is implemented as an emergency rule. The Department finds that following the non-emergency rulemaking procedures in enacting regulation of K-5 Plus programs causes imminent peril to the public health, safety, and welfare, pursuant to Section 14-4-5.6 NMSA 1978, State Rules Act, Emergency rule.

**Rule Information.** The purpose of this rule is to provide criteria for the development and implementation of the K-5 plus program in order to maximize successful outcomes and to facilitate the transition from the K-3 Plus Act to the K-5 Plus Act.

**The statutory authorizations include the following:**

**Section 22-2-1 NMSA 1978** grants the authority of the secretary to adopt, promulgate, and enforce rules.

No technical information served as a basis for this proposed rule change.

A public comment period and a public hearing, pursuant to Section 14-4-5.3 NMSA 1978, State Rules Act, Public Participation, Comments, and Rule Hearings, will be held in order to adopt a permanent rule within 180 days of the effective date of June 14, 2019 for 6.30.12 NMAC, pursuant to Section 14-4-5.6 NMSA 1978, State Rules Act, Emergency rule.

Copies of the rule may be accessed through the New Mexico Public Education Department's website under the "Rule Notification" link at <https://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/> or may be obtained from John Sena by contacting him at (505) 570-7816 during regular business hours.

Individuals with disabilities who require the above information in an alternative format are asked to contact John Sena at (505) 570-7816.

**TITLE 6            PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 30       EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS**  
**PART 12           K-5 PLUS PROGRAM**

**6.30.12.1           ISSUING AGENCY:** Public Education Department, hereinafter the department.  
[6.30.12.1 NMAC – Rp/E, 6.30.12.1 NMAC, 6/14/2019]

**6.30.12.2           SCOPE:** This rule applies to all school districts and public schools, including charter schools.  
[6.30.12.2 NMAC - Rp/E, 6.30.12.2 NMAC, 6/14/2019]

**6.30.12.3           STATUTORY AUTHORITY:** Section 22-1-2 NMSA 1978.  
[6.30.12.3 NMAC - Rp/E, 6.30.12.3 NMAC, 6/14/2019]

**6.30.12.4           DURATION:** Permanent.  
[6.30.12.4 NMAC - Rp/E, 6.30.12.4 NMAC, 6/14/2019]

**6.30.12.5           EFFECTIVE DATE:** June 14, 2019, unless a later date is cited at the end of a section.  
[6.30.12.5 NMAC - Rp/E, 6.30.12.5 NMAC, 6/14/2019]

**6.30.12.6           OBJECTIVE:** This rule provides criteria for the development and implementation of the K-5 plus program in order to maximize successful outcomes for students and to facilitate the transition from the K-3 Plus Act to the K-5 Plus Act. Development and implementation includes assisting school districts and charter schools as they build capacity to offer K-5 plus programs. Development and implementation also includes assessing and evaluating K-5 plus programs.  
[6.30.12.6 NMAC - Rp/E, 6.30.12.6 NMAC, 6/14/2019]

**6.30.12.7           DEFINITIONS:**

**A.            “Capacity”** means having the appropriate numbers of teachers and students participating in the K-5 plus program to meet program eligibility requirements.

**B.            “Evidence-based scientific math strategies and program”** means instructional strategies and mathematics programs that apply rigorous, systematic, and objective procedures to obtain valid measures relevant to math instruction and that are developmentally appropriate and integrate standards for mathematical practices.

**C.            “Evidence-based scientific reading strategies and program”** means 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.

**D.            “High-priority schools”** means, for the purpose of the K-5 plus program, a public school:  
(1)           in which eighty percent or more of the elementary school’s students are eligible for free or reduced-fee lunch at the time the public school applies for the K-5 plus program;  
(2)           that is a low-performing elementary school;  
(3)           that participated in K-3 plus or K-5 plus programs in the most recent school year;  
(4)           that is identified as a comprehensive support and improvement school; or  
(5)           that is identified as a targeted support and improvement school.

**E.            “Instructional day”** means at least five and one-half instructional hours per day for kindergarten through sixth grade and at least six instructional hours per day for seventh through twelfth grade.

**F.            “K-5 plus program”** means a voluntary program, for approved full-day kindergarten classes and classes in grades one through five, that extends the school year by 25 or more additional instructional days for the purpose of literacy and numeracy instruction. The additional 25 or more instructional days will commence prior to the regular school year.

**G.            “Local education agency or “LEA”** means a school district, or a locally chartered, or state-chartered charter school.

**H.            “Multi-layered system of support”** means an umbrella framework that encompasses response to intervention and positive behavioral intervention and supports.

**I. “Progress monitoring”** means a scientifically-based practice that teachers use to evaluate the effectiveness of their instruction for individual students and their entire class through:

- (a) the identification of goals;
- (b) measurement of progress toward meeting those goals, comparing expected and actual rates of learning; and
- (c) adjustments in instruction.

**J. “School-wide”** means the program is offered in kindergarten and grades one through five, or as many of those grade levels as an elementary school has.

**K. “Screening assessment”** means the standardized assessment administered multiple times per year for all students to assess specific skills and to identify academically at-risk students.

**L. “Secretary”** means the secretary of public education.  
[6.30.12.7 NMAC - Rp/E, 6.30.12.7 NMAC, 6/14/2019]

**6.30.12.8 PROGRAM DEVELOPMENT AND IMPLEMENTATION:** The department shall support schools in their capacity-building to increase participation in the K-5 plus program. Capacity-building includes professional development, curriculum development, teacher recruitment, parent and family outreach, assessment, and program design and evaluation.

[6.30.12.8 NMAC - Rp/E, 6.30.12.8 NMAC, 6/14/2019]

**6.30.12.9 PROGRAM ELIGIBILITY:**

**A.** To be eligible for K-5 plus program units a school shall commit to:

- (1) providing 25 or more additional instructional days of K-5 plus programming prior to the start of the regular school year;
- (2) keeping students that participate in the K-5 plus program with the same teacher and cohort of students for the following regular school year;
- (3) providing K-5 plus teachers additional professional development on how young children learn to read; and
- (4) implementing the program school-wide.

**B.** Schools shall pay for a teacher’s salary and professional development in the event a school cannot meet the requirement in Paragraph (2) of Subsection A of 6.30.12.9 NMAC. The remaining K-5 programming elements must be delivered. This option is available for no more than two teachers per school.

**C.** Temporary flexibility may be granted to ensure sustainable programs.  
[6.30.12.9 NMAC - Rp/E, 6.30.12.9 NMAC, 6/14/2019]

**6.30.12.10 PROGRAM ELEMENT - INSTRUCTION:**

**A.** K-5 plus programs for kindergarten and grades one through five shall include:

- (1) a daily classroom schedule with time for all students to practice independent reading;
- (2) instruction and intervention provided to students based on screening assessment data to guide instruction to meet student needs;
- (3) a comprehensive evidence-based early literacy core basal reading program or intervention in alignment with the English language arts common core state standards established in 6.29.13.8 NMAC that:
  - (a) identify the concepts and skills necessary to establish the foundation of success in early reading;
  - (b) include instructional strategies that ensure children learn identified concepts and skills; and
  - (c) include key early literacy skills instruction including but not limited to phonological awareness, phonics, reading fluency, vocabulary, comprehension, and writing to support comprehension.
- (4) a sequential comprehensive, developmentally appropriate early mathematics program that aligns with the mathematics common core state standards established in 6.29.14 NMAC that:
  - (a) identify the concepts and skills necessary to establish the foundation of success in early mathematics; and
  - (b) include instructional strategies that ensure children learn identified concepts and skills; and
- (5) implementation of the department’s multi-layered system of support.

**B.** Schools shall provide intervention services in literacy and numeracy for students enrolled in the K-5 plus program who are not meeting grade level requirements.  
[6.30.12.10 NMAC - Rp/E, 6.30.12.10 NMAC, 6/14/2019]

**6.30.12.11 PROGRAM ELEMENT - ASSESSMENT:**

**A.** K-5 plus schools shall administer a common screening assessment for student literacy that diagnoses the acquisition of reading skills, including phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency.

**B.** The screening assessment in accordance with the requirements of this section shall be administered to students participating in the K-5 plus program at the following times:

- (1) beginning of the K-5 plus program;
- (2) end of the K-5 plus program;
- (3) beginning of the regular school year;
- (4) middle of the regular school year; and
- (5) end of the regular school year.

[6.30.12.11 NMAC - Rp/E, 6.30.12.11 NMAC, 6/14/2019]

**6.30.12.12 PROFESSIONAL DEVELOPMENT:**

**A.** The LEA shall provide professional development to K-5 plus teachers in the following areas:

- (1) early literacy research and its implications for instruction for phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency in kindergarten and grades one through five;
- (2) best practices of culturally and linguistically responsive instruction, including instruction for English language learners; and
- (3) best practices in early mathematics instruction.

**B.** To support successful implementation of K-5 plus programs the department shall develop and disseminate information on best practices in the areas of professional development, curriculum development, teacher recruitment, parent and family outreach, assessment, and program design.

[6.30.12.12 NMAC - Rp/E, 6.30.12.12 NMAC, 6/14/2019]

**6.30.12.13 APPLICATION AND REVIEW PROCESS:**

**A.** Pursuant to the K-5 Plus Act, the department shall review all applications for approval. Priority will be given to those schools identified as high-priority schools. Applicants that meet the application deadlines will be approved based on demonstration of the capacity to meet K-5 plus program requirements as set forth in statute, regulation and department guidance, provided there is sufficient funding.

**B.** No later than October 15 of each year, a school district or charter school that wishes to apply for a new K-5 plus program for the next fiscal year shall submit to the department the actual number of students who participated in its K-5 plus programs in the current calendar year and an estimate of the number of students the school district or charter school expects will participate in the K-5 plus programs in the next calendar year. The department shall not approve a new K-5 plus program unless the school district or charter school notifies the department of its intent to start a new program as required by Subsection B of 6.30.12.13 NMAC.

**C.** No later than November 15 of each year, the department shall notify the legislature of the number of students participating in K-5 plus programs in the current school year and of the number of students projected to participate in K-5 plus programs in the next school year.

[6.30.12.13 NMAC - Rp/E, 6.30.12.13 NMAC, 6/14/2019]

**6.30.12.14 FUNDING MECHANISMS:**

**A.** Funding for individual school K-5 plus programs shall be calculated based on the approved number of students in attendance on a date prescribed by the department, multiplied by the cost differential factor of 0.3.

**B.** Any additional services for students with disabilities required by the individualized education program may be paid for by the district special education budget. School districts shall meet the maintenance of effort requirements at 34 CFR Section 300.203, of the Individuals with Disabilities Education Act (IDEA). The expenditure levels for special education and related services shall be maintained or shall exceed the previous year, unless a district has allowable exceptions under 34 CFR Section 300.204 or is allowed to reduce maintenance of

effort pursuant to 34 CFR Section 300.205. School districts may use IDEA funds only for the excess cost of providing special education and related services for students with disabilities.  
[6.30.12.14 NMAC - Rp/E, 6.30.12.14 NMAC, 6/14/2019]

**6.30.12.15 EVALUATION AND REPORTING AND AUDITING:**

**A.** Schools shall comply with annual and interim reports as required by the department for student and program assessment and evaluation.

**B.** All students participating in K-5 plus shall be reported to the department through the department's data collection and reporting system. Required fields include the following:

- (1) daily attendance;
- (2) demographic information;
- (3) services rendered under the multi-layered system of support;
- (4) assigned teacher; and
- (5) number of years the student has participated in the K-5 plus program.

**C.** The department may request additional information regarding staffing, endorsements, licensure levels, program elements, class roster reports, professional development activities, parent and family involvement activities, implementation successes and challenges, and suggested modifications.

**D.** Site monitoring visits by the department or by evaluators designated by the department shall be conducted. District and school personnel shall attend site visits as needed as determined by the department.

**E.** The department shall report annually to the legislature and the governor on the development and progress of the K-5 plus program.

**F.** The department shall establish a K-5 plus advisory committee composed of representatives of school districts and charter schools that participate in the K-5 plus program, the legislative education study committee, the legislative finance committee and other stakeholders. The advisory committee shall meet twice a year to advise the department on K-5 plus implementation.

[6.30.12.15 NMAC – N/E, 6/14/2019]

**HISTORY OF 6.30.12 NMAC:**

6.30.12 NMAC, K-3 Plus Program, filed 10/30/2014, was repealed and replaced by 6.30.12 NMAC, K-5 Plus Program, effective 6/14/2019.



## 1 AN ACT

2 RELATING TO PUBLIC EDUCATION; MAKING CHANGES TO THE PUBLIC  
3 SCHOOL FUNDING FORMULA; CHANGING THE DEFINITION OF "SCHOOL-  
4 AGE PERSON"; REQUIRING PERFORMANCE-BASED BUDGETING; CREATING  
5 A RURAL POPULATION RATE; LIMITING SCHOOL SIZE ADJUSTMENTS;  
6 PROVIDING FOR EXTENDED LEARNING TIME; CREATING A REFORM FUND;  
7 MAKING K-5 PLUS AN ONGOING PROGRAM; INCREASING TEACHER AND  
8 PRINCIPAL MINIMUM SALARIES; REPEALING THE K-3 PLUS PROGRAM;  
9 MAKING AN APPROPRIATION.

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

12 SECTION 1. Section 22-1-2 NMSA 1978 (being Laws 2003,  
13 Chapter 153, Section 3, as amended by Laws 2015, Chapter 58,  
14 Section 2 and by Laws 2015, Chapter 108, Section 1) is  
15 amended to read:

16 "22-1-2. DEFINITIONS.--As used in the Public School  
17 Code:

18 A. "academic proficiency" means mastery of the  
19 subject-matter knowledge and skills specified in state  
20 academic content and performance standards for a student's  
21 grade level;

22 B. "charter school" means a school authorized by a  
23 chartering authority to operate as a public school;

24 C. "commission" means the public education  
25 commission;

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1           D. "department" means the public education  
2 department;

3           E. "home school" means the operation by the parent  
4 of a school-age person of a home study program of instruction  
5 that provides a basic academic educational program, including  
6 reading, language arts, mathematics, social studies and  
7 science;

8           F. "instructional support provider" means a person  
9 who is employed to support the instructional program of a  
10 school district, including educational assistant, school  
11 counselor, social worker, school nurse, speech-language  
12 pathologist, psychologist, physical therapist, occupational  
13 therapist, recreational therapist, marriage and family  
14 therapist, interpreter for the deaf and diagnostician;

15           G. "licensed school employee" means teachers,  
16 school administrators and instructional support providers;

17           H. "local school board" means the policy-setting  
18 body of a school district;

19           I. "local superintendent" means the chief  
20 executive officer of a school district;

21           J. "parent" includes a guardian or other person  
22 having custody and control of a school-age person;

23           K. "private school" means a school, other than a  
24 home school, that offers on-site programs of instruction and  
25 that is not under the control, supervision or management of a

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1 local school board;

2 L. "public school" means that part of a school  
3 district that is a single attendance center in which  
4 instruction is offered by one or more teachers and is  
5 discernible as a building or group of buildings generally  
6 recognized as either an elementary, middle, junior high or  
7 high school or any combination of those and includes a  
8 charter school;

9 M. "school" means a supervised program of  
10 instruction designed to educate a student in a particular  
11 place, manner and subject area;

12 N. "school administrator" means a person licensed  
13 to administer in a school district and includes school  
14 principals, central district administrators and charter  
15 school head administrators;

16 O. "school-age person" means a person who is at  
17 least five years of age prior to 12:01 a.m. on September 1 of  
18 the school year, who has not received a high school diploma  
19 or its equivalent and who has not reached the person's  
20 twenty-second birthday on the first day of the school year  
21 and meets other criteria provided in the Public School  
22 Finance Act;

23 P. "school building" means a public school, an  
24 administration building and related school structures or  
25 facilities, including teacher housing, that is owned,

1 acquired or constructed by the school district as necessary  
2 to carry out the functions of the school district;

3 Q. "school bus private owner" means a person,  
4 other than a school district, the department, the state or  
5 any other political subdivision of the state, that owns a  
6 school bus;

7 R. "school district" means an area of land  
8 established as a political subdivision of the state for the  
9 administration of public schools and segregated  
10 geographically for taxation and bonding purposes;

11 S. "school employee" includes licensed and  
12 nonlicensed employees of a school district;

13 T. "school principal" means the chief  
14 instructional leader and administrative head of a public  
15 school;

16 U. "school year" means the total number of  
17 contract days offered by public schools in a school district  
18 during a period of twelve consecutive months;

19 V. "secretary" means the secretary of public  
20 education;

21 W. "state agency" or "state institution" means the  
22 New Mexico military institute, New Mexico school for the  
23 blind and visually impaired, New Mexico school for the deaf,  
24 New Mexico boys' school, girls' welfare home, New Mexico  
25 youth diagnostic and development center, Sequoyah adolescent

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1 treatment center, Carrie Tingley crippled children's  
2 hospital, New Mexico behavioral health institute at Las Vegas  
3 and any other state agency responsible for educating resident  
4 children;

5 X. "state educational institution" means an  
6 institution enumerated in Article 12, Section 11 of the  
7 constitution of New Mexico;

8 Y. "substitute teacher" means a person who holds a  
9 certificate to substitute for a teacher in the classroom;

10 Z. "teacher" means a person who holds a level one,  
11 two or three-A license and whose primary duty is classroom  
12 instruction or the supervision, below the school principal  
13 level, of an instructional program or whose duties include  
14 curriculum development, peer intervention, peer coaching or  
15 mentoring or serving as a resource teacher for other  
16 teachers;

17 AA. "certified school instructor" means a licensed  
18 school employee; and

19 BB. "certified school employee" or "certified  
20 school personnel" means a licensed school employee."

21 **SECTION 2.** A new section of the Public School Code is  
22 enacted to read:

23 "SHORT TITLE.--Sections 2 through 5 of this act may be  
24 cited as the "K-5 Plus Act"."

25 **SECTION 3.** A new section of the Public School Code is

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1 enacted to read:

2 "K-5 PLUS--ELIGIBILITY--REQUIREMENTS.--

3 A. A school district or charter school may apply  
4 to participate in the K-5 plus program and is eligible to  
5 receive program units for students enrolled in elementary  
6 schools approved by the department to participate in the K-5  
7 plus program. In approving schools for participation in K-5  
8 plus, the department shall prioritize elementary schools:

9 (1) in which eighty percent or more of the  
10 elementary school's students are eligible for free or  
11 reduced-fee lunch;

12 (2) that are low-performing elementary  
13 schools;

14 (3) that participated in the 2018 K-3 plus  
15 or K-5 plus program; and

16 (4) that meet criteria established by  
17 department rule.

18 B. Each K-5 plus program shall:

19 (1) provide no fewer than twenty-five  
20 additional instructional days prior to the start of the  
21 regular school year;

22 (2) keep students that participate in the  
23 K-5 plus program with the same teacher and cohort of students  
24 during the regular school year;

25 (3) include additional professional

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1 development for K-5 plus teachers in how young children learn  
2 to read; and

3 (4) be implemented school-wide.

4 C. An elementary school is ineligible for K-5 plus  
5 program units if it fails to meet the requirements of  
6 Subsection B of this section."

7 **SECTION 4.** A new section of the Public School Code is  
8 enacted to read:

9 "K-5 PLUS--OVERSIGHT--REPORTING.--

10 A. The department shall:

11 (1) enforce the provisions of the K-5 Plus  
12 Act;

13 (2) issue rules for the development and  
14 implementation of K-5 plus programs;

15 (3) assist school districts and charter  
16 schools in developing and evaluating K-5 plus programs;

17 (4) develop and disseminate information on  
18 best practices in the area of academic success of early  
19 learners;

20 (5) establish reporting and evaluation  
21 requirements, including student and program assessments, for  
22 schools participating in the program;

23 (6) annually report to the legislature and  
24 the governor on the efficacy of K-5 plus programs; and

25 (7) establish a K-5 plus advisory committee

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1 composed of representatives of school districts and charter  
2 schools that participate in the K-5 plus program, the  
3 legislative education study committee, the legislative  
4 finance committee and other stakeholders. The advisory  
5 committee shall meet twice a year to advise the department on  
6 K-5 plus implementation.

7 B. Students participating in K-5 plus shall be  
8 evaluated at the beginning of K-5 plus, and their progress  
9 shall be measured through department-approved summative and  
10 formative assessments."

11 SECTION 5. A new section of the Public School Code is  
12 enacted to read:

13 "K-5 PLUS--APPLICATION.--

14 A. School districts and charter schools that wish  
15 to participate in the K-5 plus program shall apply to  
16 participate in their annual educational plans submitted to  
17 the department pursuant to the Public School Finance Act.

18 B. No later than October 15 of each year, a school  
19 district or charter school that wishes to apply for a new K-5  
20 plus program for the next fiscal year shall submit to the  
21 department the actual number of students participating in its  
22 K-5 plus programs in the current year and an estimate of the  
23 number of students the school district or charter school  
24 expects will participate in K-5 plus programs in the next  
25 year. The department shall not approve a new K-5 plus

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1 program unless the school district or charter school notifies  
2 the department of its intent to start a new program as  
3 required by this section.

4 C. No later than November 15 of each year, the  
5 department shall notify the legislature of the number of  
6 students participating in K-5 plus programs in the current  
7 school year and of the number of students projected to  
8 participate in K-5 plus programs in the next school year."

9 SECTION 6. Section 22-8-2 NMSA 1978 (being Laws 1978,  
10 Chapter 128, Section 3, as amended) is amended to read:

11 "22-8-2. DEFINITIONS.--As used in the Public School  
12 Finance Act:

13 A. "ADM" or "MEM" means membership;

14 B. "membership" means the total enrollment of  
15 qualified students on the current roll of a class or school  
16 on a specified day. The current roll is established by the  
17 addition of original entries and reentries minus withdrawals.  
18 Withdrawals of students, in addition to students formally  
19 withdrawn from the public school, include students absent  
20 from the public school for as many as ten consecutive school  
21 days; provided that withdrawals do not include students in  
22 need of early intervention and habitual truants the school  
23 district is required to intervene with and keep in an  
24 educational setting as provided in Section 22-12-9 NMSA 1978;

25 C. "basic program ADM" or "basic program MEM"

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1 means the MEM of qualified students but excludes the full-  
2 time-equivalent MEM in early childhood education and three-  
3 and four-year-old students receiving special education  
4 services;

5 D. "cost differential factor" is the numerical  
6 expression of the ratio of the cost of a particular segment  
7 of the school program to the cost of the basic program in  
8 grades four through six;

9 E. "department" or "division" means the public  
10 education department;

11 F. "early childhood education ADM" or "early  
12 childhood education MEM" means the full-time-equivalent MEM  
13 of students attending approved early childhood education  
14 programs;

15 G. "full-time-equivalent ADM" or "full-time-  
16 equivalent MEM" is that membership calculated by applying to  
17 the MEM in an approved public school program the ratio of the  
18 number of hours per school day devoted to the program to six  
19 hours or the number of hours per school week devoted to the  
20 program to thirty hours;

21 H. "operating budget" means the annual financial  
22 plan and educational plan required to be submitted by a local  
23 school board or governing body of a state-chartered charter  
24 school;

25 I. "performance measure" means a quantitative

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1 indicator used to assess the output or outcome of an approved  
2 program;

3 J. "performance target" means the expected level  
4 of performance of a program's performance measure;

5 K. "program cost" is the product of the total  
6 number of program units to which a school district is  
7 entitled multiplied by the dollar value per program unit  
8 established by the legislature;

9 L. "program element" is that component of a public  
10 school system to which a cost differential factor is applied  
11 to determine the number of program units to which a school  
12 district is entitled, including MEM, full-time-equivalent  
13 MEM, teacher, classroom or public school;

14 M. "program unit" is the product of the program  
15 element multiplied by the applicable cost differential  
16 factor;

17 N. "public money" or "public funds" means all  
18 money from public or private sources received by a school  
19 district or state-chartered charter school or officer or  
20 employee of a school district or state-chartered charter  
21 school for public use;

22 O. "qualified student" means a public school  
23 student who:

24 (1) has not graduated from high school;

25 (2) is regularly enrolled in one-half or

1 more of the minimum course requirements approved by the  
2 department for public school students; and

3 (3) in terms of age and other criteria:

4 (a) is at least five years of age prior  
5 to 12:01 a.m. on September 1 of the school year;

6 (b) is at least three years of age at  
7 any time during the school year and is receiving special  
8 education services pursuant to rules of the department;

9 (c) except as provided in Subparagraph  
10 (d) of this paragraph, has not reached the student's  
11 twenty-second birthday on the first day of the school year;  
12 or

13 (d) has reached the student's twenty-  
14 second birthday on the first day of the 2019-2020 school  
15 year, is counted in a school district's or charter school's  
16 MEM on the third reporting date of the 2018-2019 school year,  
17 has been continuously enrolled in the same public school  
18 since that reporting date and is still enrolled in that  
19 school;

20 P. "rural population rate" means that proportion  
21 of the total population within a school district's geographic  
22 boundaries that lives in a rural area and not in an urban  
23 area as defined by the United States census bureau;

24 Q. "staffing cost multiplier" means:

25 (1) for fiscal year 2019, the instructional

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1 staff training and experience index;

2 (2) for fiscal year 2020, the weighted  
3 average of the instructional staff training and experience  
4 index at seventy-five percent and the teacher cost index at  
5 twenty-five percent;

6 (3) for fiscal year 2021, the weighted  
7 average of the instructional staff training and experience  
8 index at fifty percent and the teacher cost index at fifty  
9 percent;

10 (4) for fiscal year 2022, the weighted  
11 average of the instructional staff training and experience  
12 index at twenty-five percent and the teacher cost index at  
13 seventy-five percent; and

14 (5) for fiscal year 2023 and subsequent  
15 fiscal years, the teacher cost index; and

16 R. "state superintendent" means the secretary of  
17 public education or the secretary's designee."

18 **SECTION 7.** Section 22-8-5 NMSA 1978 (being Laws 1967,  
19 Chapter 16, Section 59, as amended) is amended to read:

20 "22-8-5. RULES--PROCEDURES.--

21 A. The department, in consultation with the state  
22 auditor, shall establish rules and procedures for a uniform  
23 system of accounting and budgeting of funds for all public  
24 schools and school districts of the state. The rules,  
25 including revisions or amendments, shall become effective

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1 upon filing with the state records center and archives and  
2 publication. A copy shall also be filed with the department  
3 of finance and administration.

4 B. All public schools and school districts shall  
5 comply with the rules and procedures prescribed and shall,  
6 upon request, submit additional reports concerning finances  
7 to the department, including an accounting of the costs of  
8 services related to providing a program included in the  
9 educational plan approved by the department. In addition,  
10 upon request, all public schools and school districts shall  
11 file reports with the department containing pertinent details  
12 regarding applications for federal money or federal grants-  
13 in-aid or regarding federal money or federal grants-in-aid  
14 received, including details of programs, matching funds,  
15 personnel requirements, salary provisions and program  
16 numbers, as indicated in the catalog of federal domestic  
17 assistance, of the federal funds applied for and of those  
18 received.

19 C. Upon request by the department of finance and  
20 administration, the legislative finance committee or the  
21 legislative education study committee, the department shall  
22 furnish information and data obtained from public schools and  
23 school districts and information compiled by the department  
24 related to public school finances within ten business days."

25 SECTION 8. Section 22-8-6 NMSA 1978 (being Laws 1967,

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1 Chapter 16, Section 60, as amended by Laws 1999, Chapter 281,  
2 Section 21 and by Laws 1999, Chapter 291, Section 2) is  
3 amended to read:

4 "22-8-6. OPERATING BUDGETS--EDUCATIONAL PLANS--  
5 SUBMISSION--FAILURE TO SUBMIT.--

6 A. Prior to April 15 of each year, each local  
7 school board shall submit to the department an operating  
8 budget for the school district and any locally chartered  
9 charter school in the school district for the ensuing fiscal  
10 year.

11 B. The date for the submission of the operating  
12 budget for each school district and each charter school as  
13 required by this section may be extended to a later date fixed  
14 by the secretary.

15 C. The operating budget required by this section  
16 may include:

17 (1) estimates of the cost of insurance  
18 policies for periods up to five years if a lower rate may be  
19 obtained by purchasing insurance for the longer term; or

20 (2) estimates of the cost of contracts for  
21 the transportation of students for terms extending up to four  
22 years.

23 D. The operating budget required by this section  
24 shall include a budget for each charter school of the  
25 membership projected for each charter school, the total

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1 program units generated at that charter school and approximate  
2 anticipated disbursements and expenditures at each charter  
3 school.

4 E. For fiscal year 2021 and subsequent fiscal  
5 years, each school district's and each locally chartered or  
6 state-chartered charter school's educational plan shall  
7 include:

8 (1) information on the instructional time  
9 offered by the school district or charter school, including  
10 the number of instructional days by school site and the number  
11 of hours in each instructional day and the frequency of early-  
12 release days;

13 (2) a narrative explaining the identified  
14 services to improve the academic success of at-risk students;

15 (3) a narrative explaining the services  
16 provided to students enrolled in the following programs:

17 (a) extended learning time programs,  
18 including a report of how the extended learning time is used  
19 to improve the academic success of students and professional  
20 learning of teachers; and

21 (b) K-5 plus programs;

22 (4) a narrative explaining the school  
23 district's or charter school's beginning teacher mentorship  
24 programs as well as class size and teaching load information;

25 (5) a narrative explaining supplemental

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1 programs or services offered by the school district or charter  
2 school to ensure that the Bilingual Multicultural Education  
3 Act, the Indian Education Act and the Hispanic Education Act  
4 are being implemented by the school district or charter  
5 school;

6 (6) a narrative describing the amount of  
7 program cost generated for services to students with  
8 disabilities and the spending of these revenues on services to  
9 students with disabilities, which shall include the following:

10 (a) program cost generated for students  
11 enrolled in approved special education programs;

12 (b) budgeted expenditures of program  
13 cost, for students enrolled in approved special education  
14 programs, on students with disabilities;

15 (c) the amount of program cost  
16 generated for personnel providing ancillary and related  
17 services to students with disabilities;

18 (d) budgeted expenditures of program  
19 cost for personnel providing ancillary and related services to  
20 students with disabilities, on special education ancillary and  
21 related services personnel; and

22 (e) a description of the steps taken to  
23 ensure that students with disabilities have access to a free  
24 and appropriate public education; and

25 (7) a common set of performance targets and

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1 performance measures, as determined by the department in  
2 consultation with the department of finance and  
3 administration, the legislative finance committee and the  
4 legislative education study committee.

5 F. If a local school board or governing board of a  
6 charter school fails to submit an operating budget pursuant to  
7 this section, the department shall prepare the operating  
8 budget for the school district or charter school for the  
9 ensuing fiscal year. A local school board or governing board  
10 of a charter school shall be considered as failing to submit  
11 an operating budget pursuant to this section if the budget  
12 submitted exceeds the total projected resources of the school  
13 district or charter school or if the budget submitted does not  
14 comply with the law or with rules and procedures of the  
15 department."

16 SECTION 9. Section 22-8-6.1 NMSA 1978 (being Laws 1993,  
17 Chapter 227, Section 8, as amended) is amended to read:

18 "22-8-6.1. CHARTER SCHOOL OPERATING BUDGETS--MAXIMUM  
19 MEM.--

20 A. Each state-chartered charter school shall  
21 submit to the charter schools division of the department a  
22 school-based operating budget. The operating budget shall be  
23 submitted to the division for approval or amendment pursuant  
24 to the Public School Finance Act and the Charter Schools Act.  
25 Thereafter, the operating budget shall be submitted to the

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1 commission for review.

2 B. Each locally chartered charter school shall  
3 submit to the local school board a school-based operating  
4 budget for approval or amendment. The approval or amendment  
5 authority of the local school board relative to the charter  
6 school operating budget is limited to ensuring that sound  
7 fiscal practices are followed in the development of the  
8 operating budget and that the charter school operating budget  
9 is within the allotted resources. The local school board  
10 shall have no veto authority over individual line items within  
11 the charter school's proposed financial budget or over any  
12 item in the educational plan, but shall approve or disapprove  
13 the operating budget in its entirety. Upon final approval of  
14 the charter school operating budget by the local school board,  
15 the individual charter school operating budget shall be  
16 included separately in the budget submission to the department  
17 required pursuant to the Public School Finance Act and the  
18 Charter Schools Act.

19 C. For its first year of operation, a charter  
20 school's operating budget shall be based on the projected  
21 number of program units generated by the school and its  
22 students using the at-risk index and the staffing cost  
23 multiplier of the school district in which the charter school  
24 is located, and the charter school's operating budget shall be  
25 adjusted using the qualified MEM on the first reporting date

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1 of the current school year. For its second and subsequent  
2 fiscal years of operation, a charter school's operating budget  
3 shall be based on the number of program units generated by the  
4 charter school and its students using the average of the MEM  
5 on the second and third reporting dates of the prior year, the  
6 at-risk index of the school district in which the charter  
7 school is located and the charter school's staffing cost  
8 multiplier."

9 SECTION 10. Section 22-8-9 NMSA 1978 (being Laws 1967,  
10 Chapter 16, Section 63, as amended) is amended to read:

11 "22-8-9. BUDGETS--MINIMUM REQUIREMENTS.--

12 A. An operating budget for a school district shall  
13 not be approved by the department if the educational plan does  
14 not provide for:

15 (1) a school year and school day as provided  
16 in Section 22-2-8.1 NMSA 1978; and

17 (2) a pupil-teacher ratio or class or  
18 teaching load as provided in Section 22-10A-20 NMSA 1978.

19 B. The department shall, by rule, establish the  
20 requirements for an instructional day, the standards for an  
21 instructional hour and the standards for a full-time teacher  
22 and for the equivalent thereof."

23 SECTION 11. Section 22-8-10 NMSA 1978 (being Laws 1967,  
24 Chapter 16, Section 65, as amended) is amended to read:

25 "22-8-10. BUDGETS--FIXING THE OPERATING BUDGET.--

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1           A. Prior to June 20 of each year, each local  
2 school board and each governing board of a charter school  
3 shall, at a public hearing of which notice has been published  
4 by the local school board or governing board of a charter  
5 school, fix the operating budget for the school district or  
6 charter school for the ensuing fiscal year. At the discretion  
7 of the secretary or the local school board or governing body  
8 of a charter school, the department may participate in the  
9 public hearing.

10           B. Prior to the public hearing held to fix the  
11 operating budget for the school district or charter school,  
12 the local school board or governing body of a charter school  
13 shall give notice to parents explaining the budget process and  
14 inviting parental involvement and input in that process prior  
15 to the date for the public hearing. The educational plan  
16 submitted by the local school board or the governing body of a  
17 charter school to the department shall include information on  
18 parental involvement and input."

19           **SECTION 12.** Section 22-8-11 NMSA 1978 (being Laws 1967,  
20 Chapter 16, Section 66, as amended) is amended to read:

21           "22-8-11. BUDGETS--APPROVAL OF OPERATING BUDGET.--

22           A. The department shall:

23                   (1) on or before July 1 of each year,  
24 approve and certify to each local school board and governing  
25 body of a charter school an operating budget for use by the

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1 school district or charter school;

2 (2) ensure that each program in a school  
3 district or charter school's operating budget meets the  
4 requirements of law and the department's rules and procedures  
5 and that no school district or charter school generates  
6 program units for a program not meeting the requirements of  
7 law and the department's rules or procedures;

8 (3) make corrections, revisions and  
9 amendments to the operating budgets fixed by the local school  
10 boards or governing bodies of charter schools and the  
11 secretary to conform the operating budgets to the requirements  
12 of law and to the department's rules and procedures; and

13 (4) ensure that a local school board or  
14 governing body of a charter school is prioritizing resources  
15 toward proven programs and methods that are linked to improved  
16 student achievement.

17 B. No school district or charter school or officer  
18 or employee of a school district or charter school shall make  
19 any expenditure or incur any obligation for the expenditure of  
20 public funds unless that expenditure or obligation is made in  
21 accordance with an operating budget approved by the  
22 department. This prohibition does not prohibit the transfer  
23 of funds pursuant to the department's rules and procedures.

24 C. The department shall not approve and certify an  
25 operating budget of any school district or charter school that

1 fails to demonstrate that parental involvement in the budget  
2 process was solicited.

3 D. The department shall not approve and certify an  
4 operating budget of any school district or charter school that  
5 the secretary determines has failed to provide sufficient data  
6 and information to determine if the school district or charter  
7 school is meeting the requirements of law or the department's  
8 rules and procedures."

9 SECTION 13. Section 22-8-18 NMSA 1978 (being Laws 1974,  
10 Chapter 8, Section 8, as amended) is amended to read:

11 "22-8-18. PROGRAM COST CALCULATION--LOCAL  
12 RESPONSIBILITY.--

13 A. The total program units for the purpose of  
14 computing the program cost shall be calculated by multiplying  
15 the sum of the program units itemized as Paragraphs (1) and  
16 (2) in this subsection by the staffing cost multiplier and  
17 adding the program units itemized as Paragraphs (3) through  
18 (16) in this subsection. The itemized program units are as  
19 follows:

- 20 (1) early childhood education;  
21 (2) basic education;  
22 (3) special education, adjusted by  
23 subtracting the units derived from membership in class D  
24 special education programs in private, nonsectarian, nonprofit  
25 training centers;

- 1 (4) bilingual multicultural education;
- 2 (5) fine arts education;
- 3 (6) elementary physical education;
- 4 (7) size adjustment;
- 5 (8) at-risk;
- 6 (9) enrollment growth or new district
- 7 adjustment;
- 8 (10) special education units derived from
- 9 membership in class D special education programs in private,
- 10 nonsectarian, nonprofit training centers;
- 11 (11) national board for professional
- 12 teaching standards certification;
- 13 (12) home school student;
- 14 (13) home school student activities;
- 15 (14) charter school student activities;
- 16 (15) K-5 plus; and
- 17 (16) extended learning time.

18 B. The total program cost calculated as prescribed  
19 in Subsection A of this section includes the cost of early  
20 childhood, special, bilingual multicultural, fine arts and  
21 vocational education and other remedial or enrichment  
22 programs. It is the responsibility of the local school board  
23 or governing body of a charter school to determine its  
24 priorities in terms of the needs of the community served by  
25 that board. Except as otherwise provided in this section,

1 funds generated under the Public School Finance Act are  
2 discretionary to local school boards and governing bodies of  
3 charter schools; provided that the special program needs as  
4 enumerated in this section are met; and provided further that  
5 the department shall ensure that the local school board or  
6 governing body of a charter school is prioritizing resources  
7 for the public school toward proven programs and methods  
8 linked to improved student achievement."

9 SECTION 14. Section 22-8-23 NMSA 1978 (being Laws 1975,  
10 Chapter 119, Section 1, as amended) is amended to read:

11 "22-8-23. SIZE ADJUSTMENT PROGRAM UNITS.--

12 A. An approved public school, including a charter  
13 school, with a MEM of fewer than four hundred, including early  
14 childhood education full-time-equivalent MEM but excluding  
15 membership in class C and class D programs and excluding full-  
16 time-equivalent membership in three- and four-year-old  
17 developmentally disabled programs, that is geographically  
18 located in a school district with fewer than two thousand MEM,  
19 is eligible for additional program units. Separate schools  
20 established to provide special programs, including but not  
21 limited to vocational and alternative education, shall not be  
22 classified as public schools for purposes of generating size  
23 adjustment program units. The number of additional program  
24 units to which a school district or charter school is entitled  
25 under this subsection is the sum of elementary-junior high

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1 units and senior high units computed in the following manner:

2 Elementary-Junior High Units

3 200 - MEM

4  $\frac{\quad}{200} \times 1.0 \times \text{MEM} = \text{Units}$

5

6 where MEM is equal to the membership of an approved elementary

7 or junior high school, including early childhood education

8 full-time-equivalent membership but excluding membership in

9 class C and class D programs and excluding full-time-

10 equivalent membership in three- and four-year-old

11 developmentally disabled programs;

12 Senior High Units

13 200 - MEM

14  $\frac{\quad}{200} \times 2.0 \times \text{MEM} = \text{Units}$

15

16 or,

17 Senior High Units

18 400 - MEM

19  $\frac{\quad}{400} \times 1.6 \times \text{MEM} = \text{Units}$

20

21 whichever calculation for senior high units is higher, where

22 MEM is equal to the membership of an approved senior high

23 school excluding membership in class C and class D programs.

24 B. An approved public school with a MEM of fewer

25 than four hundred, including early childhood education full-

1 time-equivalent MEM but excluding MEM in class C and class D  
2 programs and excluding full-time-equivalent MEM in three- and  
3 four-year-old developmentally disabled programs,  
4 geographically located in a school district with two thousand  
5 MEM or more is eligible for additional program units computed  
6 in the following manner:

7 (1) for fiscal year 2020, eighty percent of  
8 the sum of elementary-junior high units and senior high units  
9 as prescribed in Subsection A of this section;

10 (2) for fiscal year 2021, sixty percent of  
11 the sum of elementary-junior high units and senior high units  
12 as prescribed in Subsection A of this section;

13 (3) for fiscal year 2022, forty percent of  
14 the sum of elementary-junior high units and senior high units  
15 as prescribed in Subsection A of this section;

16 (4) for fiscal year 2023, twenty percent of  
17 the sum of elementary-junior high units and senior high units  
18 as prescribed in Subsection A of this section; and

19 (5) for fiscal year 2024 and subsequent  
20 fiscal years, no elementary-junior high units and senior high  
21 units as prescribed in Subsection A of this section.

22 C. A school district with total MEM of fewer than  
23 four thousand, including early childhood education full-time-  
24 equivalent MEM, is eligible for additional program units. The  
25 number of additional program units to which a school district

1 is entitled under this subsection is the number of district  
2 units computed in the following manner:

3 District Units  
4 4,000 - MEM  
5 \_\_\_\_\_ x 0.15 x MEM = Units  
6 4,000

7 where MEM is equal to the total district membership,  
8 including early childhood education full-time-equivalent  
9 membership.

10 D. A school district, as defined in Subsection R  
11 of Section 22-1-2 NMSA 1978, with a MEM of fewer than two  
12 hundred, including early childhood education full-time-  
13 equivalent MEM, is eligible for additional program units if  
14 the department certifies that the school district has  
15 implemented practices to reduce scale inefficiencies,  
16 including shared service agreements with regional education  
17 cooperatives or other school districts for noninstructional  
18 functions and distance education. The numbers of additional  
19 program units to which a school district is entitled under  
20 this subsection is the number of units computed in the  
21 following manner:

22 200 - MEM = Units

23 where MEM is equal to the total district MEM, including early  
24 childhood education full-time-equivalent MEM.

25 E. A school district with a rural population rate

1 greater than forty percent or a charter school initially  
2 chartered before July 1, 2018 and geographically located in a  
3 school district with a rural population rate greater than  
4 forty percent is eligible for additional program units. The  
5 number of additional program units to which a school district  
6 or charter school is entitled pursuant to this subsection is  
7 determined by multiplying the full-time-equivalent MEM by the  
8 rural population rate and the cost differential factor of 0.03  
9 for fiscal year 2020, 0.06 for fiscal year 2021, 0.09 for  
10 fiscal year 2022, 0.12 for fiscal year 2023 and 0.15 for  
11 fiscal year 2024 and subsequent fiscal years."

12 SECTION 15. Section 22-8-23.3 NMSA 1978 (being Laws  
13 1997, Chapter 40, Section 7, as amended) is amended to read:

14 "22-8-23.3. AT-RISK PROGRAM UNITS.--

15 A. A school district is eligible for additional  
16 program units if it establishes within its department-approved  
17 educational plan identified services to assist students to  
18 reach their full academic potential. A school district  
19 receiving additional at-risk program units shall include a  
20 report of specified services implemented to improve the  
21 academic success of at-risk students. The report shall  
22 identify the ways in which the school district and individual  
23 public schools use funding generated through the at-risk index  
24 and the intended outcomes. For purposes of this section, "at-  
25 risk student" means a student who meets the criteria to be

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1 included in the calculation of the three-year average total  
2 rate in Subsection B of this section. The number of  
3 additional units to which a school district is entitled under  
4 this section is computed in the following manner:

$$5 \quad \text{At-Risk Index} \times \text{MEM} = \text{Units}$$

6 where MEM is equal to the total district membership, including  
7 early childhood education, full-time-equivalent membership and  
8 special education membership and where the at-risk index is  
9 calculated in the following manner:

$$10 \quad \text{Three-Year Average Total Rate} \times 0.25 = \text{At-Risk Index.}$$

11 B. To calculate the three-year average total rate,  
12 the department shall compute a three-year average of the  
13 school district's percentage of membership used to determine  
14 its Title 1 allocation, a three-year average of the percentage  
15 of membership classified as English language learners using  
16 criteria established by the office for civil rights of the  
17 United States department of education and a three-year average  
18 of the percentage of student mobility. The department shall  
19 then add the three-year average rates. The number obtained  
20 from this calculation is the three-year average total rate.

21 C. The department shall recalculate the at-risk  
22 index for each school district every year.

23 D. For purposes of this section, "services" means  
24 research-based or evidence-based social, emotional or academic  
25 interventions, such as:

1 (1) case management, tutoring, reading  
2 interventions and after-school programs that are delivered by  
3 social workers, counselors, teachers or other professional  
4 staff;

5 (2) culturally relevant professional and  
6 curriculum development, including those necessary to support  
7 language acquisition, bilingual and multicultural education;

8 (3) additional compensation strategies for  
9 high-need schools;

10 (4) whole school interventions, including  
11 school-based health centers and community schools;

12 (5) educational programming intended to  
13 improve career and college readiness of at-risk students,  
14 including dual or concurrent enrollment, career and technical  
15 education, guidance counseling services and coordination with  
16 post-secondary institutions; and

17 (6) services to engage and support parents  
18 and families in the education of students."

19 **SECTION 16.** A new section of the Public School Finance  
20 Act is enacted to read:

21 "EXTENDED LEARNING TIME PROGRAM.--

22 A. A school district or charter school is eligible  
23 for additional program units if it establishes within its  
24 department-approved educational plan an extended learning time  
25 program that meets the requirements of Subsection B, C or D of

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1 this section.

2 B. An extended learning time program shall  
3 include:

4 (1) a minimum of one hundred ninety  
5 ~~instructional~~ days per school year, with at least five and  
6 one-half instructional hours per instructional day for  
7 kindergarten through sixth grade and at least six  
8 instructional hours per day for seventh through twelfth grade;

9 (2) after-school program opportunities for  
10 academic learning or extracurricular enrichment to students  
11 that do not supplant federally funded programs; and

12 (3) a minimum of eighty noninstructional  
13 hours per school year for professional development for  
14 instructional staff.

15 C. An extended learning time program in a school  
16 district operating a four-day school week in fiscal year 2019  
17 or in a school district with fewer than one thousand MEM  
18 operating a four-day school week shall include:

19 (1) a minimum of one hundred sixty  
20 ~~instructional~~ days per school year with at least six and one-  
21 half hours per instructional day for kindergarten through  
22 sixth grade and at least seven instructional hours per  
23 instructional day for seventh through twelfth grade;

24 (2) after-school program opportunities for  
25 academic learning or extracurricular enrichment to students

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1 that do not supplant federally funded programs; and

2 (3) a minimum of eighty noninstructional  
3 hours per school year for professional development for  
4 instructional staff.

5 D. With department approval, an elementary school  
6 that has an extended learning time program that qualifies for  
7 extended learning time program units pursuant to Subsection B  
8 or C of this section that also has a qualifying K-5 plus  
9 program pursuant to the K-5 Plus Act may structure the school  
10 year to provide the additional instructional time required  
11 pursuant to the applicable subsection of this section by  
12 extending existing instructional days.

13 E. The number of additional units to which a  
14 school district or charter school is entitled under this  
15 section is computed in the following manner:

$$16 \text{ MEM} \times 0.11."$$

17 **SECTION 17.** A new section of the Public School Finance  
18 Act is enacted to read:

19 "K-5 PLUS PROGRAM UNITS.--The number of K-5 plus program  
20 units is determined by multiplying the MEM in  
21 department-approved K-5 plus programs by the cost differential  
22 factor of 0.3. For each reporting date, MEM in K-5 plus  
23 programs shall be equal to the number of qualified students on  
24 a date specified by department rule."

25 **SECTION 18.** A new section of the Public School Finance

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1 Act is enacted to read:

2 "NEW PROGRAM FUNDING.--For the first year of programs  
3 operating pursuant to the K-5 Plus Act, the Bilingual  
4 Multicultural Education Act, the Fine Arts Education Act or  
5 for extended learning time programs, a school district or  
6 charter school shall generate the applicable program units. A  
7 school district's or charter school's budget shall be based on  
8 the projected number of program units for the program's first  
9 year of operation and shall be adjusted using the qualified  
10 MEM on the first reporting date of the current school year."

11 SECTION 19. A new section of the Public School Finance  
12 Act is enacted to read:

13 "PUBLIC EDUCATION REFORM FUND CREATED.--

14 A. The "public education reform fund" is created  
15 as a nonreverting fund in the state treasury and consists of  
16 appropriations; unspecified gifts, grants and donations to the  
17 fund; and income from investment of the fund.

18 B. Subject to legislative appropriation, money in  
19 the fund is appropriated to the department for the purposes of  
20 implementing evidence-based public education initiatives  
21 related to high-quality teaching and school leadership,  
22 extended learning opportunities for students, educational  
23 interventions for at-risk students, effective and efficient  
24 school administration or promoting public education  
25 accountability."

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1           SECTION 20. Section 22-8B-6 NMSA 1978 (being Laws 1999,  
2 Chapter 281, Section 6, as amended) is amended to read:

3           "22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION  
4 PROCESS--AUTHORIZATION--STATE BOARD OF FINANCE DESIGNATION  
5 REQUIRED--PUBLIC HEARINGS--SUBCOMMITTEES.--

6           A. A local school board has the authority to  
7 approve the establishment of a locally chartered charter  
8 school within that local school board's district.

9           B. No later than the second Tuesday of January of  
10 the year in which an application will be filed, the organizers  
11 of a proposed charter school shall provide written  
12 notification to the commission and the school district in  
13 which the charter school is proposed to be located of their  
14 intent to establish a charter school. Failure to notify may  
15 result in an application not being accepted.

16           C. A charter school applicant shall apply to  
17 either a local school board or the commission for a charter.  
18 If an application is submitted to a chartering authority, the  
19 chartering authority shall process the application.  
20 Applications for initial charters shall be submitted by June 1  
21 to be eligible for consideration for the following fiscal  
22 year; provided that the June 1 deadline may be waived upon  
23 agreement of the applicant and the chartering authority.

24           D. An application shall include the total number  
25 of grades the charter school proposes to provide, either

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1 immediately or phased. A charter school may decrease the  
2 number of grades it eventually offers, but it shall not  
3 increase the number of grades or the total number of students  
4 proposed to be served in each grade.

5 E. An application shall include the total number  
6 of students the charter school proposes to serve in each of  
7 the charter school's first three years of operation. No later  
8 than June 15, each local school board and the commission shall  
9 notify the department as to the number of students each  
10 charter school applicant proposes to serve in each year.

11 F. An application shall include a detailed  
12 description of the charter school's projected facility needs,  
13 including projected requests for capital outlay assistance  
14 that have been approved by the director of the public school  
15 facilities authority or the director's designee. The director  
16 shall respond to a written request for review from a charter  
17 applicant within forty-five days of the request.

18 G. An application may be made by one or more  
19 teachers, parents or community members or by a public post-  
20 secondary educational institution or nonprofit organization.  
21 Municipalities, counties, private post-secondary educational  
22 institutions and for-profit business entities are not eligible  
23 to apply for or receive a charter.

24 H. An initial application for a charter school  
25 shall not be made after June 30, 2007 if the proposed charter

1 school's proposed enrollment for all grades or the proposed  
2 charter school's proposed enrollment for all grades in  
3 combination with any other charter school's enrollment for all  
4 grades would equal or exceed ten percent of the total MEM of  
5 the school district in which the charter school will be  
6 geographically located and that school district has a total  
7 enrollment of not more than one thousand three hundred  
8 students.

9 I. A state-chartered charter school shall not be  
10 approved for operation unless its governing body has qualified  
11 to be a board of finance.

12 J. The chartering authority shall receive and  
13 review all applications for charter schools submitted to it.  
14 The chartering authority shall not charge application fees.

15 K. The chartering authority shall hold at least  
16 one public hearing in the school district in which the charter  
17 school is proposed to be located to obtain information and  
18 community input to assist it in its decision whether to grant  
19 a charter school application. The chartering authority may  
20 designate a subcommittee of no fewer than three members to  
21 hold the public hearing, and, if so, the hearing shall be  
22 transcribed for later review by other members of the  
23 chartering authority. Community input may include written or  
24 oral comments in favor of or in opposition to the application  
25 from the applicant, the local community and, for state-

1 chartered charter schools, the local school board and school  
2 district in whose geographical boundaries the charter school  
3 is proposed to be located.

4 L. The chartering authority shall rule on the  
5 application for a charter school in a public meeting by  
6 September 1 of the year the application was received;  
7 provided, however, that prior to ruling on the application for  
8 which a designated subcommittee was used, any member of the  
9 chartering authority who was not present at the public hearing  
10 shall receive the transcript of the public hearing together  
11 with documents submitted for the public hearing. If not ruled  
12 upon by that date, the charter application shall be  
13 automatically reviewed by the secretary in accordance with the  
14 provisions of Section 22-8B-7 NMSA 1978. The charter school  
15 applicant and the chartering authority may, however, jointly  
16 waive the deadlines set forth in this section.

17 M. A chartering authority may approve, approve  
18 with conditions or deny an application. A chartering  
19 authority may deny an application if:

20 (1) the application is incomplete or  
21 inadequate;

22 (2) the application does not propose to  
23 offer an educational program consistent with the requirements  
24 and purposes of the Charter Schools Act;

25 (3) the proposed head administrator or other

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1 administrative or fiscal staff was involved with another  
2 charter school whose charter was denied or revoked for fiscal  
3 mismanagement or the proposed head administrator or other  
4 administrative or fiscal staff was discharged from a public  
5 school for fiscal mismanagement;

6 (4) for a proposed state-chartered charter  
7 school, it does not request to have the governing body of the  
8 charter school designated as a board of finance or the  
9 governing body does not qualify as a board of finance; or

10 (5) the application is otherwise contrary to  
11 the best interests of the charter school's projected students,  
12 the local community or the school district in whose geographic  
13 boundaries the charter school applies to operate.

14 N. If the chartering authority denies a charter  
15 school application or approves the application with  
16 conditions, it shall state its reasons for the denial or  
17 conditions in writing within fourteen days of the meeting. If  
18 the chartering authority grants a charter, the approved  
19 charter shall be provided to the applicant together with any  
20 imposed conditions.

21 O. A charter school that has received a notice  
22 from the chartering authority denying approval of the charter  
23 shall have a right to a hearing by the secretary as provided  
24 in Section 22-8B-7 NMSA 1978."

25 **SECTION 21.** Section 22-10A-7 NMSA 1978 (being Laws

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1 2003, Chapter 153, Section 38, as amended) is amended to read:

2 "22-10A-7. LEVEL ONE LICENSURE.--

3 A. A level one license is a provisional five-year  
4 license for beginning teachers that requires as a condition of  
5 licensure that the licensee undergo a formal mentorship  
6 program for at least one full school year and an annual  
7 intensive performance evaluation by a school administrator for  
8 at least three full school years before applying for a level  
9 two license.

10 B. Each school district, in accordance with  
11 department rules, shall provide for the mentorship and  
12 evaluation of level one teachers. At the end of each year and  
13 at the end of the license period, the level one teacher shall  
14 be evaluated for competency. If the teacher fails to  
15 demonstrate satisfactory progress and competence annually, the  
16 teacher may be terminated as provided in Section 22-10A-24  
17 NMSA 1978. If the teacher has not demonstrated satisfactory  
18 progress and competence by the end of the five-year period,  
19 the teacher shall not be granted a level two license.

20 C. Except in exigent circumstances defined by  
21 department rule, a level one license shall not be extended  
22 beyond the initial period.

23 D. The department shall issue a standard level one  
24 license to an applicant who is at least eighteen years of age  
25 who:

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1 (1) holds a baccalaureate degree from an  
2 accredited educational institution;

3 (2) has successfully completed a department-  
4 approved teacher preparation program from a nationally  
5 accredited or state-approved educational institution;

6 (3) has passed the New Mexico teacher  
7 assessments examination, including for elementary licensure  
8 beginning January 1, 2013, a rigorous assessment of the  
9 candidate's knowledge of the science of teaching reading; and

10 (4) meets other qualifications for level one  
11 licensure, including clearance of the required background  
12 check.

13 E. The department shall issue an alternative level  
14 one license to an applicant who meets the requirements of  
15 Section 22-10A-8 NMSA 1978.

16 F. The department shall establish competencies and  
17 qualifications for specific grade levels, types and subject  
18 areas of level one licensure, including early childhood,  
19 elementary, middle school, secondary, special and vocational  
20 education.

21 G. The minimum salary for a level one teacher is  
22 provided that teachers in an extended learning time program or  
23 K-5 plus program shall receive additional salary at the same  
24 rate as their base salary for that teaching time."

25 **SECTION 22.** Section 22-10A-10 NMSA 1978 (being Laws

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1 2003, Chapter 153, Section 41, as amended) is amended to read:

2 "22-10A-10. LEVEL TWO LICENSURE.--

3 A. A level two license is a nine-year license  
4 granted to a teacher who meets the qualifications for that  
5 level and who annually demonstrates essential competency to  
6 teach. If a level two teacher does not demonstrate essential  
7 competency in a given school year, the school district shall  
8 provide the teacher with additional professional development  
9 and peer intervention during the following school year. If by  
10 the end of that school year the teacher fails to demonstrate  
11 essential competency, a school district may choose not to  
12 contract with the teacher to teach in the classroom.

13 B. The department shall issue a level two license  
14 to an applicant who successfully completes the level one  
15 license or is granted reciprocity as provided by department  
16 rules; demonstrates essential competency required by the  
17 department as verified by the local superintendent through the  
18 highly objective uniform statewide standard of evaluation; and  
19 meets other qualifications as required by the department.

20 C. The department shall provide for qualifications  
21 for specific grade levels, types and subject areas of level  
22 two licensure, including early childhood, elementary, middle,  
23 secondary, special and vocational education.

24 D. The minimum salary for a level two teacher is  
25 provided that teachers in an extended learning time program or

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1 K-5 plus program shall receive additional salary at the same  
2 rate as their base salary for that teaching time."

3 SECTION 23. Section 22-10A-11 NMSA 1978 (being Laws  
4 2003, Chapter 153, Section 42, as amended) is amended to read:

5 "22-10A-11. LEVEL THREE LICENSURE--TRACKS FOR  
6 TEACHERS.--

7 A. A level three-A license is a nine-year license  
8 granted to a teacher who meets the qualifications for that  
9 level and who annually demonstrates instructional leader  
10 competencies. If a level three-A teacher does not demonstrate  
11 essential competency in a given school year, the school  
12 district shall provide the teacher with additional  
13 professional development and peer intervention during the  
14 following school year. If by the end of that school year the  
15 teacher fails to demonstrate essential competency, a school  
16 district may choose not to contract with the teacher to teach  
17 in the classroom.

18 B. The department shall grant a level three-A  
19 license to an applicant who has been a level two teacher for  
20 at least three years and holds a post-baccalaureate degree or  
21 national board for professional teaching standards  
22 certification; demonstrates instructional leader competence as  
23 required by the department and verified by the local  
24 superintendent through the highly objective uniform statewide  
25 standard of evaluation; and meets other qualifications for the

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1 license.

2 C. The minimum salary for a level three-A teacher  
3 is provided that teachers in an extended learning time program  
4 or K-5 plus program shall receive additional salary at the  
5 same rate as their base salary for that teaching time.

6 D. The minimum salary for a counselor who holds a  
7 level three or three-A license as provided in the School  
8 Personnel Act and rules promulgated by the department shall be  
9 the same as provided for level three-A teachers pursuant to  
10 Subsection C of this section."

11 **SECTION 24.** Section 22-10A-11.4 NMSA 1978 (being Laws  
12 2015, Chapter 74, Section 2) is amended to read:

13 "22-10A-11.4. LEVEL THREE-B ADMINISTRATOR'S LICENSE--  
14 TRACKS FOR SCHOOL ADMINISTRATOR LICENSURE.--

15 A. A level three-B administrator's license is a  
16 five-year license granted to an applicant who meets the  
17 qualifications for that license. Licenses may be renewed upon  
18 satisfactory annual demonstration of instructional leader and  
19 administrative competency.

20 B. The department shall grant a level three-B  
21 administrator's license to an applicant who:

22 (1) has completed a department-approved  
23 administrator preparation program;

24 (2) holds a current level two or level three  
25 teacher's license; and

1 (3) holds a post-baccalaureate degree or  
2 national board for professional teaching standards  
3 certification.

4 C. The minimum annual salary for a licensed school  
5 principal or assistant school principal is the minimum salary  
6 for a level three-A teacher multiplied by the applicable  
7 responsibility factor.

8 D. The department shall adopt a highly objective  
9 uniform statewide standard of evaluation, including data  
10 sources linked to student achievement and an educational plan  
11 for student success progress, for school principals and  
12 assistant school principals and rules for the implementation  
13 of that evaluation system linked to the level of  
14 responsibility at each school level.

15 E. As used in this section, "level three-B  
16 administrator's license" means a five-year license granted to  
17 an applicant who meets the qualifications pursuant to this  
18 section and department rules."

19 **SECTION 25. TEMPORARY PROVISION--FUND TRANSFER.--**Any  
20 unexpended or unencumbered balances remaining in the K-3 plus  
21 fund on June 30, 2019 shall be transferred to the  
22 state-support reserve fund and up to three million dollars  
23 (\$3,000,000) shall be transferred to the public education  
24 department to implement Section 26 of this 2019 act in fiscal  
25 year 2020.

1           **SECTION 26. TEMPORARY PROVISION--PROTECTION FROM**  
2 PROGRAM COST REDUCTIONS.--Using funds provided in Section 25  
3 of this 2019 act for fiscal year 2020, the public education  
4 department shall supplement a school district's or charter  
5 school's calculated program cost if for fiscal year 2020 the  
6 school district's or charter school's program cost is less  
7 than its final program cost in the previous fiscal year in an  
8 amount equal to one hundred percent of the reduction  
9 attributable to the implementation of Section 6 of this 2019  
10 act amending the age of a qualified student.

11           **SECTION 27. REPEAL.--Sections 22-13-28 and 22-13-28.2**  
12 NMSA 1978 (being Laws 2007, Chapter 12, Section 1 and Laws  
13 2016, Chapter 62, Section 1, as amended) are repealed.

14           **SECTION 28. DELAYED REPEAL.--Section 22-13-28.1 NMSA**  
15 1978 (being Laws 2012, Chapter 21, Section 2) is repealed  
16 effective July 1, 2020.

17           **SECTION 29. APPLICABILITY.--The provisions of Sections**  
18 2 through 19 of this act apply to the program cost calculation  
19 in fiscal year 2020 and subsequent fiscal years. The  
20 provisions of Sections 21 through 24 of this act apply to  
21 school personnel contracted to provide services for summer  
22 2019 K-5 plus programs in fiscal year 2019 and to all school  
23 personnel in fiscal year 2020 and subsequent fiscal years.\_\_\_\_\_

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**PART 12**  
**K-3 PLUS PROGRAM**

- 6.30.12.1 ISSUING AGENCY
- 6.30.12.2 SCOPE
- 6.30.12.3 STATUTORY AUTHORITY
- 6.30.12.4 DURATION
- 6.30.12.5 EFFECTIVE DATE
- 6.30.12.6 OBJECTIVE
- 6.30.12.7 DEFINITIONS
- 6.30.12.8 PROGRAM ELIGIBILITY
- 6.30.12.9 PROGRAM ELEMENT - INSTRUCTION
- 6.30.12.10 PROGRAM ELEMENT - ASSESSMENT
- 6.30.12.11 PROGRAM ELEMENT - PROFESSIONAL DEVELOPMENT
- 6.30.12.12 APPLICATION AND REVIEW PROCESS
- 6.30.12.13 FUNDING
- 6.30.12.14 EVALUATION AND REPORTING

**6.30.12.1 ISSUING AGENCY:**

Public Education Department.

[6.30.12.1 NMAC - N, 10/30/2014]

**6.30.12.2 SCOPE:**

This rule applies to all school districts, public schools, including charter schools.

[6.30.12.2 NMAC - N, 10/30/2014]

**6.30.12.3 STATUTORY AUTHORITY:**

Subsection D of Section 9-24-8 and Section 22-13-28 NMSA 1978.

[6.30.12.3 NMAC - N, 10/30/2014]

**6.30.12.4 DURATION:**

Permanent.

[6.30.12.4 NMAC - N, 10/30/2014]

**6.30.12.5 EFFECTIVE DATE:**

October 30, 2014, unless a later date is cited at the end of a section.

[6.30.12.5 NMAC - N, 10/30/2014]

**6.30.12.6 OBJECTIVE:**

This rule provides K-3 plus program and application requirements and procedures and criteria for evaluating applications.

[6.30.12.6 NMAC - N, 10/30/2014]

### **6.30.12.7 DEFINITIONS:**

A. "Award period" means the period of the equivalent 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.

C. "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.

D. "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 or the equivalent of at least 25 additional instructional days in literacy and numeracy beginning up to two months earlier than the regular school year.

E. "Progress monitoring" means the standardized assessment measures conducted between screening assessments on students who are receiving targeted and intensive interventions to determine whether the student is benefitting from interventions.

F. "Request for application or RFA" means all documents, including those attached or incorporated by reference, used for soliciting applications.

G. "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.

H. "Screening assessment" means the standardized assessment measures conducted three to four times a year for all students to assess specific skills and to identify those at risk academically.

I. "Secretary" means the secretary of public education.

[6.30.12.7 NMAC - N, 10/30/2014]

### **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.

[6.30.12.8 NMAC - N, 10/30/2014]

### **6.30.12.9 PROGRAM ELEMENT - INSTRUCTION:**

A. K-3 plus programs for kindergarten students shall include:

(1) a daily classroom schedule with at least 90 minutes of literacy instruction provided for kindergarten students and at least 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 shall be provided to students based on screening 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 both 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 and the additional applicable New Mexico standards as established in 6.29.13.8 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; and
- (c) 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 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.

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

[6.30.12.9 NMAC - N, 10/30/2014]

#### **6.30.12.10 PROGRAM ELEMENT - ASSESSMENT:**

A. K-3 plus schools shall administer a screening assessment in literacy, approved by the department, which measures the acquisition of reading skills including phonological awareness, phonics, reading fluency, vocabulary and comprehension.

B. The screening assessment in accordance with the requirements of this section shall 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.

C. In addition to the assessments required by Subsections A and B of this section, K-3 plus schools shall conduct progress monitoring between screening assessments.

[6.30.12.10 NMAC - N, 10/30/2014]

#### **6.30.12.11 PROGRAM ELEMENT - PROFESSIONAL DEVELOPMENT:**

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

- (1) 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 shall 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).

[6.30.12.11 NMAC - N, 10/30/2014]

#### **6.30.12.12 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 shall review all requests for approval and shall grant priority to those schools with research based scientific reading strategies and programs.

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

D. The department shall notify all schools and charter schools by February 1 that applications shall be accepted until March 15 and that final funding is contingent on the final 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.

[6.30.12.12 NMAC - N, 10/30/2014]

#### **6.30.12.13 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 as follows:

(1) Full day kindergarten and grades one through three shall be extended by at least 25 instructional days, beginning up to two months earlier than the regular school year. The 25 instructional days shall at least equal the total number of hours produced by multiplying five and one-half hours per day by the required 25 days.

(2) School districts and charter schools maintaining four-day calendars during the period between the close of a regular school year and the beginning of the following school year may fulfill the requirement in Paragraph (1), above, by extending full-day kindergarten and grades one through three by at least 20 instructional days beginning up to two months earlier than the regular school year. The instructional days shall at least equal the total number of hours produced by multiplying five and one-half hours per day by 25. School districts and charter schools shall document that the school district or charter school maintains a four-day calendar during the time period described.

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

C. K-3 plus programs shall be funded as follows:

(1) Funding for individual school programs is calculated by multiplying 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 10 days of the K-3 plus program by no less than 30% of the final unit value for 1.0 program unit.

(2) In setting the reimbursement amount for the summer 2014 K-3 plus program, the secretary shall use the final unit value for school year 2013-2014 as the basis for funding June, July and

August 2014 K-3 plus programs.

(3) Up to 2% of the money received by a school district shall be used for student recruitment and to ensure regular attendance by K-3 plus students.

D. All K-3 plus program funds shall be paid on a reimbursement basis. Services shall be reimbursed once delivered and a request for reimbursement (RfR) is submitted by districts/charter schools.

E. Funding granted under the K-3 plus application shall be expended and all RfRs shall be submitted to the department by December 31 of the calendar year in which the program is conducted. Schools under an alternative schedule or as agreed upon by the department shall have funds expended and all RfRs submitted by June 30 of the fiscal year in which the program is conducted.

F. K-3 plus program funding may be used to support the following but shall 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 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.

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

H. K-3 plus programming for students with disabilities shall 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 shall meet the maintenance of effort (MOE) requirements at 34 CFR Section 300.203, of the Individuals with Disabilities Education Act (IDEA) regulations. The expenditure levels for special education and related services shall be maintained or shall exceed the previous year, unless a district has allowable exceptions under 34 CFR Section 300.204 or is allowed to reduce MOE pursuant to 34 CFR Section 300.205. School districts may use IDEA funds only for the excess cost of providing special education and related services for students with disabilities.

I. Funding for K-3 plus programs is subject to appropriation by the New Mexico legislature.

[6.30.12.13 NMAC - N, 10/30/2014]

#### **6.30.12.14 EVALUATION AND REPORTING:**

A. Schools shall comply with annual and interim reports as required by the department for student and program assessments.

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

(1) demographic information;

(2) services rendered under the RtI framework

(3) assigned teacher;

(4) number of years the student has participated in the K-3 plus program.

C. 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.

D. Site monitoring visits by the department or by evaluators designated by the department shall be conducted.

E. The department shall report annually to the legislature and the governor on the efficacy of the K-3 plus program.

[6.30.12.14 NMAC - N, 10/30/2014]

**HISTORY OF 6.30.12 NMAC: [RESERVED]**