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November 17, 2014

MEMORANDUM

TO: Legislative Education Study Committee

FR: Kevin Force

RE: STAFF BRIEF: ADMINISTRATIVE RULEMAKING

Adopted Rules:

- **6.30.12 NMAC, K-3 Plus Program**

The October 30, 2014 issue of the *New Mexico Register* contained the final adoption of new rules implementing the New Mexico K-3 Plus Program. The Notice of Proposed Rulemaking was published in the *Register* on February 14, 2014 and, soliciting comments on the rule, noted that the Public Education Department (PED) was to have conducted a public hearing March 31, 2014, in Mabry Hall of the Jerry Apodaca Education Building, Santa Fe.

PED adopted these new rules (see **Attachment, Adopted Rule, K-3 Plus Program, 10/30/14**) for the administration of the K-3 Plus Program, as required by statute,¹ including:

- new definitions, such as those for:
 - “award period,” or the period of at least 25 additional instructional days provided through the program, between the close of the previous and the opening of the following school year;

¹ Section 22-13-28(D) NMSA 1978.

- “high-poverty public schools,” which means a public school, including a charter school, in which at least 80 percent of the students are eligible for free or reduced lunch, or an elementary school with a D or F grade the previous year as determined in accordance with the *A-B-C-D-F Schools Rating Act* and accompanying rules;²
 - “progress monitoring,” which 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;
 - “research-based scientific reading strategies and programs,” which 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; and
 - “screening assessment,” which 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.
- the limitation of eligibility for the program to high-poverty public schools;
 - required elements of the program, such as:
 - “Instruction,” which includes:
 - requirements of the daily classroom schedule, such as 90 minutes of literacy instruction for kindergarteners and 120 minutes for students in grades 1 through 3;
 - a comprehensive research-based early literacy core basal reading program in alignment with the English language arts Common Core State Standards (CCSS);
 - a comprehensive, developmentally appropriate mathematics program with at least 90 minutes of instruction aligned with the CCSS; and
 - literacy and numeracy interventions for enrolled students who are not meeting grade level requirements;
 - “Assessments,” including:
 - screening assessments in literacy to measure the acquisition of reading skills, including phonological awareness, phonics, reading fluency, vocabulary and comprehension, which shall be administered at the beginning of the K-3 Plus Program, the beginning of the regular school year, the mid-point of the school year, and the end of the year; and
 - progress monitoring, to be conducted between screening assessments;
 - “Professional Development,” which will be provided by PED, in early literacy research, and will include:
 - best practices for English as a second language (ESL) and mathematics instruction; and
 - the dissemination of information by PED on best practices for student recruitment and retention, as well as academic success for early learners;

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

- the “Application Process,” including:
 - submission and review procedures and deadlines; and
 - priority for those schools with evidence-based, scientific reading programs;

- “Funding,” including:
 - a requirement that the required additional instructional days of the program (25 days for schools operating on a five-day week, and 20 additional days for schools operating on a four-day week) at least be comprised of the total number of hours that would meet the minimum requisite hours per day established by statute;³
 - a provision for funding the program, based on the number of students enrolled as of the fifteenth day who have been in attendance for at least 10 days of the program, for each reported student based on at least 30 percent of the initial unit value for 1.0 program unit;
 - a stipulation that all program funds shall be paid on a reimbursement basis, with all requests for reimbursement (RfR) submitted to PED by December 31 of the program’s calendar year, unless the school is on an alternate schedule (or if agreed to by PED), in which case the RfR must be submitted by June 30 of the fiscal year in which the program is conducted;
 - a stipulation that, while program funds may not supplant funds designated for year-round activities, they may be used for:
 - ✓ salaries for teachers and educational assistants;
 - ✓ program materials and supplies; and
 - ✓ recruitment activities and attendance incentives (up to 2.0 percent of the funds received by a district or charter shall be used for student recruitment and regular attendance); and
 - a requirement that special education services beyond those of the K-3 Plus Program that are required by the *Individuals with Disabilities Education Act* may be paid for by the district special education budget, so long as districts meet their obligations for maintenance of effort; and

- “Evaluation and Reporting,” such as:
 - annual and interim reports for student and program assessments;
 - all participating students must be reported to the department to include, for example:
 - ✓ demographic information;
 - ✓ services rendered as Responses to Intervention;
 - ✓ assigned teachers; and
 - ✓ number of years in the program;

³ See Section 22-2-8.1(A)(1) NMSA 1978, requiring at least five and one-half hours per day for full-day kindergarten programs.

- site visits conducted by PED or designated evaluators;
- annual reports to the Legislature and the Governor on the efficacy of the program; and
- the possibility that PED may request additional information regarding staffing, endorsements, licensure levels, implementation successes and challenges, and suggested modifications.

In the report on the K-3 Plus rules as proposed, LESC staff noted a number of potential drafting issues for which formal comments were submitted to PED, including:

- defined terms that did not appear outside the definition section of the rule, such as “enrollment” and “screening assessment”;
- inconsistent reference to the length of the school year, which is measured in statute in hours, rather than days;
- a missing section between sections 6.30.12.8 and 6.30.12.10;
- lack of clarity, in the section detailing assessment requirements, regarding which assessments are to be administered at which point in the program;
- minor auxiliary verb usage issues, with “will,” “must,” and “should” being used instead of “may” or “shall”; and
- lack of clarity regarding whether the final funding is to be based on the initial or final unit value:
 - the enabling statute that established the K-3 Plus Program⁴ stated that funding for the program shall be *contingent* upon the *final* unit value; however,
 - the proposed rule stated that the be funded based on at least 30 percent of the *initial* unit value for one program unit, with final funding *based* upon the number of students enrolled (on the fifteenth day) who have been in attendance for 10 or more days. (Emphasis added.)

Additionally, staff note that, in the adopted version of the rules, most of these concerns have been addressed, and any problems related to them have been corrected:

- the term “enrollment” is no longer in the rule, and instances of “screening” in the rule have been changed to “screening assessment,” matching the definition;
- the definition of “regular school year” is no longer in the rule, eliminating any possible conflict between the school year being measured in hours versus days;
- the rule’s sections have been properly numbered;
- the number and scheduling of assessments have been clarified;
- problems with auxiliary verbs have been corrected; and
- funding is to be based on at least 30 percent of the *final* unit value for one program unit, multiplied by the number of students enrolled (on the fifteenth day) who have been in attendance for 10 or more days. (Emphasis added.)

Finally, staff note that, in the section dealing with assessments, the final rule omits the originally proposed requirement for math assessments.

⁴ 22-13-28(F) NMSA 1978.

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

6.30.12.1 ISSUING AGENCY: Public Education Department.
[6.30.12.1 NMAC - N, 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:

6.30.12 NMAC

SOURCE: NM Register

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- 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.

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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;

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(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]