**TITLE 6 PRIMARY AND SECONDARY EDUCATION**

**CHAPTER 19 PUBLIC SCHOOL ACCOUNTABILITY – ASSESSMENT AND ACCOUNTABILITY**

**PART 9 EARLY LITERACY rEMEDIATION, INTERVENTIONS, AND FAMILY ENGAGEMENT**

**6.19.9.1 ISSUING AGENCY:** Public Education Department, herein after the department.

[6.19.9.1 NMAC - N, 7/1/2018]

**6.19.9.2 SCOPE:** All public schools, state education institutions, and educational programs conducted in state institutions, other than the New Mexico military institute, serving students in kindergarten and grades one through three. If any part or application of this rule is held invalid, the remainder of the rule or its application in other situations shall not be affected.

[6.19.9.2 NMAC - N, 7/1/2018]

**6.19.9.3**  **STATUTORY AUTHORITY:** This regulation is adopted pursuant to NMSA 1978, 22-2C-1 to 13, specifically 22-2C-6 NMSA 1978.

[6.19.9.3 NMAC - N, 7/1/2018]

**6.19.9.4**  **DURATION:** Permanent.

[6.19.9.4 NMAC - N, 7/1/2018]

**6.19.9.5 EFFECTIVE DATE:** July 1, 2018, unless a later date is cited at the end of a section.

[6.19.9.5 NMAC - N, 7/1/2018]

**6.19.9.6 OBJECTIVE:** This rule establishes the conditions for improving early literacy outcomes for students in kindergarten and grades one through three by outlining interventions, providing mechanisms for engaging families, and notifying parents or legal guardians of all available options to improve student progress in early literacy.

[6.19.9.6 NMAC - N, 7/1/2018]

**6.19.9.7 DEFINITIONS:**

**A. “Academic improvement plan”** means a written document developed by the student assistance team that outlines the grade-level literacy content not mastered by the student, and that prescribes specific remediation programs.

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

**C.** **“Benchmark assessment”** means a department-approved assessment for student literacy that diagnoses and regularly measures the acquisition of reading skills, including phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency to be given a minimum of three times during the academic year.

**D. “Individual student report”** means the report that indicates the student’s performance on the required state assessment using scale scores, performance levels, and subclaim performance indicators.

**E.** **“Intervention”** means the intensive targeted instruction of individual students or small groups of students, as determined by student performance on the benchmark assessment.

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

**G.** **“Remediation”** means tutoring, extended school day or school week programs, summer programs, and other evidence-based interventions and proven models for student improvement.

**H.** **“Student assistance team”** means a group consisting of a student’s:

**(1)** teacher;

**(2)** school counselor;

**(3)** school administrator; and

**(4)** parent or legal guardian, if they choose to participate.

[6.19.9.7 NMAC - N, 7/1/2018]

**6.19.9.8 GENERAL REQUIREMENTS FOR INTERVENTION, NOTIFICATION, AND REPORTING:**

**A.** The benchmark assessment for student literacy shall be administered a minimum of three times during the academic year. The beginning of year, middle of year, and end of year benchmarks shall be designated by the department. Student progress shall be carefully monitored throughout the academic year and shall be clearly communicated to parents or legal guardians through parent notification letters. The benchmark assessment shall measure, at a minimum, student performance on the five components of early reading: phonemic awareness, phonics, fluency, vocabulary, and reading comprehension. For English language learners, the assessment shall be grade-level appropriate and in the student’s first language if appropriate and approved by the department.

**B.** Academic improvement plans shall be developed for students in need of early literacy intervention, as determined by performance on the benchmark assessment. School administrators shall ensure that academic improvement plans align with department guidance and evidence-based best practices. The department may request to review student academic improvement plans at any time.

**C.** The determination of a student’s literacy strengths and weaknesses, as measured by the benchmark assessment, shall serve as criteria for offering parents or legal guardians the option for their student to receive an additional year of instruction in the same grade level. The benchmark assessment results shall also direct the use of daily intervention, remediation, or alternative programming.

**D.** For kindergarten and grades one through three, LEAs shall track and report student literacy promotion data in accordance with department requirements. Student proficiency shall be measured by the benchmark assessment, as defined in 6.19.9.7 NMAC. The department may issue additional guidance or provide additional tools to facilitate the collection and reporting of literacy promotion data.

**(1)** LEAs shall report the following data to the department by March 1 of each year:

**(a)** number of students not proficient in reading, as determined by the middle of year benchmark assessment;

**(b)** number of student assistance teams convened for students not proficient in reading; and

**(c)** number of parent notification letters sent regarding individual students not proficient in reading, as determined by the middle of year benchmark assessment.

**(2)** LEAs shall report the following data to the department by June 1 of each year:

**(a)** number of students not proficient in reading, as determined by the end of year benchmark assessment; and

**(b)** number of retention waiver letters signed by parents or legal guardians of students not proficient in reading.

**(3)** LEAs shall report the following data to the department by August 1 of each year:

**(a)** number of students retained as a result of not being proficient in reading, as determined by the end of year benchmark assessment;

**(b)** number of students not proficient in reading, as determined by the end of year benchmark assessment, promoted to the next grade;

**(c)** number of students reading at performance level one, according to his or her grade three individual student report;

**(d)** explanation of final determinations of student retention and promotion for which student proficiency on the end of year benchmark assessment was not the deciding factor;

**(e)** copy of the LEA’s retention waiver letter template;

**(f)** copies of all parent notification letters sent to parents or legal guardians regarding individual students not proficient in reading, as determined by the middle of year benchmark assessment; and

**(g)** copies of all retention waiver letters signed by parents or legal guardians for individual students not proficient in reading, as determined by the end of year benchmark.

[6.19.9.8 NMAC - N, 7/1/2018]

**6.19.9.9 PARENT OR LEGAL GUARDIAN NOTIFICATION AND ENGAGEMENT:**

**A.** If a student is not proficient in reading as determined by the middle of year benchmark assessment, the student’s teacher shall notify the student’s parent or legal guardian formally, in writing, and hold a parent-teacher conference.

**(1)** Written notification shall include:

**(a)** student performance on the benchmark assessment and ongoing progress monitoring;

**(b)** specific interventions implemented to-date;

**(c)** strategies for parents or legal guardians to implement at home; and

**(d)** parent or legal guardian options including:

**(i)** daily intervention;

**(ii)** remediation; or

**(iii)** alternative programs.

**(2)** During the parent-teacher conference, the teacher shall review:

**(a)** the student’s performance in comparison to grade-level literacy standards;

**(b)** assessment results that indicate the student is not on track to meet literacy benchmarks;

**(c)** student growth targets that will lead to student proficiency in reading by the end of the academic year; and

**(d)** whether or not the student is on track to be college and career ready as measured by the mid-year benchmark assessment.

**B.** A student assistance team shall develop an academic improvement plan for any student not proficient in reading as determined by the middle of year benchmark assessment. The academic improvement plan shall clearly outline progress monitoring activities and associated timelines to ensure student progress toward achieving grade-level literacy proficiency.

**C.** If a student has not reached grade-level literacy benchmarks as determined by the end of year benchmark assessment, the student’s teacher shall notify the student’s parent or legal guardian formally, in writing.

**(1)** Written notification shall include:

**(a)** student performance on the benchmark assessment;

**(b)** specific interventions implemented to-date;

**(c)** strategies for parents or legal guardians to implement at home; and

**(d)** a retention option pursuant to 22-2C-6 NMSA 1978.

**(2)** Retention shall ensure that a student receives an additional year of instruction in the same grade with an amended academic improvement plan. If a student’s parent or legal guardian decides not to retain the student, the parent or legal guardian shall sign a retention waiver expressing their desire for the student to be promoted to the next higher grade with an academic improvement plan designed to address specific early literacy deficiencies. A retention waiver shall only prevent the student’s retention for one school year. If the student fails to reach proficiency in reading, as determined by the benchmark assessment, the following year, the school shall retain the student.

**D.** In all grades and subject areas, parents or legal guardians shall be notified of their student’s results on required state assessments and provided their individual student report no later than 30 days after the start of the academic school year. This notification shall also be shared with the student’s former and current teachers no later than 30 days after the start of the academic school year.

[6.19.9.9 NMAC - N, 7/1/2018]

**6.19.9.10 EXEMPTIONS:** Schools may only exempt students from retention for good cause or pursuant to the completion of a retention waiver letter provided by the LEA. A student who is promoted with an exemption shall continue to receive literacy interventions that include specific literacy strategies prescribed in his or her academic improvement plan until proficiency is achieved.

**A.** Good cause exemptions shall be limited to the following:

**(1)** students with disabilities whose individualized education program (IEP) indicate that participation in the benchmark assessment is not appropriate, pursuant to Subsection I of Section 22-2C-6 NMSA 1978, or other applicable state laws and regulations;

**(2)** students with disabilities who were previously retained in kindergarten or grades one, two, or three, and who participate in the benchmark assessment, and whose IEPs or section 504 plans reflect that they have received literacy intervention for more than two years but are still deficient in reading. ;

**(3)** students who have been previously retained in their current grade; or

**(4)** students identified as English language learners who have had less than three years of instruction in schools in the United States.

**B.** Documentation shall be submitted by the student’s teacher to the school principal indicating why promotion is appropriate. Documentation shall include the reason for exemption and an existing academic improvement plan or IEP.

**C.** The school principal shall review and discuss the recommendation with the student’s teacher and parent or legal guardian and determine whether or not the student qualifies for the requested exemption. If the school principal determines that, based on the provided documentation, the student qualifies for the requested exemption, the school principal shall make such a recommendation in writing to the superintendent or charter school administrator. The superintendent or charter school administrator shall accept or reject the school principal’s recommendation in writing.

[6.19.9.10 NMAC - N, 7/1/2018]

**6.19.9.11 ACCELERATION OPTIONS:** Academically challenging curriculum options that provide accelerated instruction shall be made available to public school students in kindergarten and grades one through three as follows:

**A.** At a minimum, each school shall offer the following options:

**(1)** whole-grade and mid-year promotion;

**(2)** subject-matter acceleration; and

**(3)** online instruction in personalized, higher grade level content.

**B.** Additional options may include the following:

**(1)** enriched science, technology, engineering, and mathematics;

**(2)** enrichment programs;

**(3)** flexible grouping;

**(4)** advanced academic courses;

**(5)** combined classes;

**(6)** self-paced instruction;

**(7)** curriculum compacting;

**(8)** advanced-content instruction; and

**(9)** telescoping curriculum.

[6.19.9.11 NMAC - N, 7/1/2018]

**6.19.9.12 ELIGIBILITY AND PROCEDURAL REQUIREMENTS FOR ACCELERATION:**

**A.** LEAs shall establish student eligibility requirements and procedural requirements for any whole-grade promotion, mid-year promotion, or subject-matter acceleration that may result in a student attending a different school. Student eligibility requirements and procedural requirements established by the LEA shall be included in the LEA’s comprehensive student progression plan.

**B.** School principals shall establish student eligibility requirements and a process by which parents or legal guardians may request student participation in acceleration options offered at their school.

**(1)** Each principal shall inform parents or legal guardians and students of the options available at the school and the associated eligibility requirements for each option.

**(2)** If the parent or legal guardian selects one of these options, and the student meets the eligibility requirements established by the principal, the student shall be provided the opportunity to participate in the acceleration option.

**C.** When establishing student eligibility requirements for acceleration, principals and LEAs shall consider, at a minimum:

**(1)** the student’s performance on a locally determined assessment;

**(2)** the student’s performance as indicated on his or her individual student report;

**(3)** the student’s grade point average;

**(4)** the student’s attendance and conduct record;

**(5)** recommendations from one or more of the student’s teachers in core-curricula courses;

**(6)** a recommendation from a certified school counselor, if one is assigned to the school in which the student is enrolled; and

**(7)** a recommendation from the student’s parent or legal guardian.

[6.19.9.12 NMAC - N, 7/1/2018]

**HISTORY OF 6.19.9 NMAC:** [Reserved]