

## retention comments

Jennifer Smith <jennifer.smith@rrps.net>

Fri 4/20/2018 1:39 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

To Whom It May Concern-

I am deeply troubled about the upcoming policy regarding retaining any student in any grade from k-3 who does not meet target benchmarks on standardized testing. First and foremost, I am not saying that students who are struggling should simply be pushed forward regardless of their difficulties. But I am deeply concerned about the academic, social, and emotional impact on students who are retained. My twin brother was retained in 7th grade. To make a point, he was smart and likely would have passed standardized assessments but he didn't want to do homework so he failed and was retained. As a result, he has struggled with depression for years, has felt "like a loser", and dropped out of high school his senior year. He went to trade school and has a successful job, but is dealing with the emotional effects to this day. He is 45 years old. Is this what we want for our youngest generation?

Studies do NOT show that more teaching of the same material is all they need. Studies do NOT show that kids who are retained aren't bothered by it. Studies do NOT show that after retention, students who are retained do as well or better than students who are promoted. Studies DO show that students find being retained to be in the "traumatic" category comparable to parents fighting or being caught stealing. Studies DO show that students who are retained actually achieve LESS academically than peers who were promoted. studies DO show that students who are retained are more likely to drop out. Studies DO show that retention is harmful and ineffective at increasing academic achievement. (<http://www.wrightslaw.com/info/fape.grade.retention.nasp.pdf>)

file:///C:/Users/jsmith/Downloads/GradeRetentionandSocialPromotion%20(1).pdf

<https://files.eric.ed.gov/fulltext/ED438916.pdf>

<http://www.wrightslaw.com/info/grade.ret.fallacy.pdf>

<http://www.ascd.org/publications/educational-leadership/mar08/vol65/num06/Grade-Retention.aspx>

<http://smhp.psych.ucla.edu/pdfdocs/graderet.pdf>

Please spend some time researching this proposal. Think of the effects on schools where we'll have tremendous expense in hiring double the number of first, second, and third grade teachers to account for retentions based on the criteria put forward, especially since kids can be retained multiple times. Will we have then students who are 14 in 5th grade? Is that healthy for students, both those retained and their supposed "peer group"? Are we prepared to pay to educate students until age 21? Are we willing to retain students with learning disabilities, when we know the reason they are not growing is because of a disability and not because they simply need more time? Will more time help a person in a wheelchair walk? Will more exposure to track and field teach this student to run?

Why can we not instead place our resources into other programs (since the state clearly has the resources to expand the number of students in the elementary schools across the state- we'll continue to get new kindergarten students but fewer students in grade 3-5.). Pay for Saturday schools. Provide more money for teachers to provide tutoring before and after school. Pay for more summer school programs. Provide pre-k literacy programs for at risk students. Provide more teachers to lower class sizes or pay for more interventionists

to provide concentrated support for students who show signs of struggle and who are at risk of failure. All of these address the root of the problem. Retention does not.

Please do not pass this dangerous ruling. People like my brother suffered from it in the past. He has still yet to recover from the harm it did to him. Don't do that to a generation of New Mexico's children. Instead, be willing to provide supports to our children. Don't call them FAILURES, Provide them with help and support so they can succeed!

Thank you for your consideration. (This is written as both an employee of the state ed department and as a mother of 3 students who attend NM educational institutions.)

Sincerely,

Jennifer Smith

## Comment for proposed new rule 6.19.9 NMAC

Yo Benally <ybenally@yahoo.com>

Thu 4/26/2018 6:47 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

26APR18

Jamie Gonzales

Policy Division, New Mexico Public Education Department, Room 101

300 Don Gaspar Avenue,

Santa Fe, New Mexico 87501

In response to the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement, I am submitting my objection to this new proposed rule affecting my children.

The reasons for objecting is because the proposed rule relies on high-risk assessments to determine young children's proficiency in reading and uses that data alone to determine remediation and retention decisions. The proposed rule takes away my school district's discretion to determine what is best for my Navajo child based on her/his individual needs as a student, not based on what she scores on a standardized test. Early retention would have negative effects on student achievement long after their early childhood. Other programs such as afterschool programs that are being offered at our elementary would be better for improving and monitoring academic performance.

Professional development for teachers is also another program that could improve the performance in my children's education.

I do not support the proposed rule and should be not be passed because it will cause damage to young children today and in the future.

Sincerely,

Yolanda Benally-Littletree

Mother of 3 at Eva B. Stokely, Shiprock, NM.

Veteran & Engineer

*State of New Mexico*  
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April 23, 2018

Christopher Ruskowski  
Secretary-Designate  
New Mexico Public Education Department  
300 Don Gaspar  
Santa Fe, NM 87501

Dear Secretary-Designate Ruskowski:

The Legislative Education Study Committee is submitting this letter as formal written comment to the department's proposed new rule, 6.19.9 NMAC, concerning early reading benchmark assessments, interventions, promotion, and retention. The rule in its current form, and based on the sections of statute the department cited as granting the department authority to promulgate the rule, exceeds the statutory authority granted to the department and conflicts with current statutory provisions, as follows:

- **Applicability to Kindergarten Students.** The proposed rule would apply to kindergarten through third-grade students; however, the provisions of Section 22-2C-6 NMSA 1978 only apply to first through 12th grade students. Kindergarten students are not mentioned in the Assessment and Accountability Act and as such, the Public Education Department (PED) does not have the authority to promulgate these rules to apply to kindergarten students.
- **PED-Approved Benchmark Assessment and PED-Designated Benchmarks for Kindergarten through Third Grade Students.** The proposed rule would require school districts and charter schools to administer a PED-approved benchmark assessment for literacy to kindergarten through third-grade students three times a year and use the results to make remediation and retention decisions. The Assessment and Accountability Act does not grant PED the authority to require school districts and charter schools to administer a PED-approved benchmark assessment for student literacy, nor does it grant the department the authority to establish the benchmarks that students must meet to be considered proficient. Subsection A of Section 22-2C-6 NMSA 1978 states, "Remediation programs, academic improvement programs and promotion policies shall

be aligned with school-district-determined assessment results and requirements of the state assessment and accountability program.” (The state assessment and accountability program referenced in this section refers only to standards-based assessments generally implemented pursuant to federal requirements).

- **Use of PED-Approved Benchmark Assessment for Remediation and Retention Decisions.** The proposed rule would require school districts and charter schools to make student remediation and retention decisions based on a PED-determined cut score on a PED-approved benchmark literacy assessment. Again, current law requires remediation programs, academic improvement programs, and promotion policies to “be aligned with school-district-determined assessment results...” Additionally, Subsection F of Section 22-2C-6 NMSA 1978 requires proficiency or lack thereof to be established through multiple measures, including “grades, performance on school district assessments and other measures identified by the school district.” This section does not give PED the statutory authority to approve or mandate a particular benchmark literacy assessment or to use a single assessment as the only metric to make remediation and retention decisions.
- **Good Cause Exemptions.** Because statute grants the authority to local school districts to make retention decisions based on locally identified multiple measures, PED does not appear to have the statutory authority to specify and limit “good cause” exemptions from student retention as identified in the proposed rule.
- **Accelerated Instruction.** The requirement for school districts and charter schools to make accelerated instruction available to kindergarten through third grade students also appears to fall outside of PED’s statutory authority; nowhere in the Assessment and Accountability Act is the idea of accelerated instruction contemplated.
- **Definitions.** The definitions of “academic improvement plan” and “student assistance team” are different than the definition of those terms in statute.

Pursuant to State Rules Act, no rule is valid or enforceable if it conflicts with statute and a conflict between a rule and a statute will be resolved in favor of the statute. The committee respectfully requests PED review the Assessment and Accountability Act and ensure the department is considering a rule that complies with current statutory requirements.

Thank you in advance for considering this request.

Sincerely,



Senator Mimi Stewart, Chair



Representative G. Andrés Romero, Vice Chair

STATE OF NEW MEXICO  
**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
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ALBUQUERQUE NM 870

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Jamie Gonzales  
New Mexico Public Education Department  
Policy Division  
300 Don Gaspar Ave, Room 101  
Santa Fe, NM 87501

87501-278699



# Untitled

Janet Harman <secondwindrepair@hotmail.com>

Wed 5/9/2018 10:08 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Thank you for the opportunity to provide feedback on this important rule. First of all - no instruction for young children should be data driven. As a parent of 2 (ages 16 and 12) I can tell you that their reading skills could not be accurately measured at the beginning stages. In fact, I do not know of anyone whose reading level could be measured when they were learning to read. The emphasis on data collection in modern education is a ruse and only serves to drain energy away from actual instruction, and line the pockets of companies selling programs to measure data. Everyone learns to read at a different pace, it cannot be standardized.

If the state wants reading skills to improve, especially in younger students, why not fund full-time librarians at every school? Librarians are the experts at encouraging reading. Why not fund at least one reading interventionist at every school? Reading interventionist know how to teach reading. And beyond that, anyone who is working with a child who has any training knows how to teach a child to read. Increase the numbers of teachers and I guarantee you more NM children will be reading. Also, it would be helpful for there to have more expertise in the schools about dyslexia which, if you take into consideration the many ways it can present, is far more prevalent than commonly believed.

Also, supporting literacy for the entire family is crucial. Involving families in meaningful ways in education is critical if you want to improve reading skills.

By the way, there is a common belief among some European educators that children should not learn to read before they are 7 or 8 years old. Faster, sooner, younger is not always better. Please research the literacy rates in countries where children are introduced to reading at a later age.

The rules proposed are totally off base.

Sincerely,

Janet Harman

## Early Literacy

Janet Harman <secondwindrepair@hotmail.com>

Thu 5/10/2018 10:33 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Dear PED,

Once again your ignorance on child development has prevailed. These rules are disgusting, misguided and are nothing more than proof that the PED in this state is guided by some force that doesn't have anything to do with successful learning. Where do I begin? I suggest, since the department is data driven, that it do a little research to find ANY data that would support this initiative. Why don't you start in Europe where the expected age to begin to teach reading is generally accepted to be around 6-8 years old. Europe is generally thought of as a pretty literate continent, the last time I checked.

The acquirement of reading skills is a highly individual process, some children can read at 3 years, some begin to become literate at 8 years. You cannot standardize this process. Ask any literacy interventionist, or librarian, or teacher, or parent, or, for that matter, anyone who was ever a child. Speaking of professionals in this field - why is there no proposed increase in personnel to attack this problem? Why is there not a guarantee of a full-time on site librarian with an active library program at every school? Why is there no support proposed for families, many of which struggle with literacy themselves? You really think sticking a young child in front of a computer to test him/her 3 times a year will increase early literacy in this state?

The only outcome of this will be an increase in profits for the test manufacturers or administrators. And having our children spend even more time in front of a screen, which actually has been proven to decrease literacy among our youth. That's more data for you to research.

Please....the students of this state deserve for you to begin to take them into consideration, instead of some profit driven force.

Outraged,

Janet Harman

(mother of 12 year old, 16 year old students in APS)

## Opposition Ltr to PED Rule Change 6.19.9

Michael Grossman <Michael.Grossman@la-panthers.org>

Fri 5/11/2018 7:40 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

 1 attachment

Opposition Ltr to PED Rule Change 6.19.9.pdf;

Lake Arthur Municipal Schools comments in opposition of PED Rule Change 6.190.9

Michael Grossman, Superintendent  
Lake Arthur Municipal Schools  
700 Broadway  
P.O. Box 98  
Lake Arthur, NM 88253  
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Subject: Opposition Ltr to PED Rule Change 6.19.9

Attachment File Type: pdf, Multi-Page



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May 10, 2017

New Mexico Public Education Department  
Attn: Jamie Gonzales  
Policy Division, Rm. 101  
300 Don Gaspar Avenue  
Santa Fe, NM 87501  
Sent via email: [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us)

Dear Secretary-Designate Ruszkowski:

The Board of Education and I, as superintendent, of Lake Arthur Municipal Schools do not support the proposed rule 6. 19.9 “Early Literacy Remediation, Interventions, and Parental Engagement.”

The stated rule change does not address the basic student needs of literacy proficiency in the State of New Mexico. The presented statements cite significant weaknesses within the proposed changes and point out significant discrepancies across all school districts and their ability to meet even basic proficiency requirements in present literacy regulations and expectations.

The district questions the legal standing of such a rule change in that it contradicts the present statutory language.

The proposed rule is an increase in the unfunded mandate already in effect for districts to create intervention structures to address grades K-3 student non-proficiency status.

Tier 2 and Tier 3 instruction requires development and application of alternative instructional resources that are not universally available through professional development programs and/or funding of those alternative educational resources from validated research-based early learning instructional systems.

There is a significant lack of qualified teachers in reading across the State of New Mexico. This fact plays a pivotal role in providing professional experienced teaching to each New Mexico student.

The state has demonstrated a consistent inability to provide equal access across all New Mexico school districts to professional development to promote an increase in the ability of all New Mexico teachers to provide high quality reading instruction.

Embedded professional development by an instructional coach employed by a school district is not available to many school districts due to lack of funding to equally meet personnel needs in every New Mexico school district.

There is no balance to the system of the Public Education Department's process of endorsing research-based systemic reading programs as a basic right for each student and then creating a competitive application process and funding guidelines for implementation of the K3+ program and Reads to Lead that disqualifies universal reading improvement and is especially restrictive for application within small school districts.

The retention of students who have not met proficiency levels are often subjected to repeated same instruction due to the lack of investment in having professional reading teachers in the classroom and/or adequate professional development in the use of alternative instructional processes to improve the delivery of reading instruction. Therefore, the intended process becomes instruction that is punitive, socially inappropriate, and educationally ineffective.

The act of basing retention on high-stakes test scores has been substantiated that the act retention impacts disproportionately and negatively children of color, impoverished children, English language learners, and special needs students.

Research has shown that retaining students is strongly correlated with behavior problems and increased drop-out rates.

Grade retention represents policies that are based on a misleading advocacy of abolishing what is termed as "social promotion" when it is in fact the state's inability to fund a system of education in each school in which each student is provided the means to attain grade level proficiency.

Retention research has provided documentation that a child's self-concept is adversely affected by the act of retention with children feeling it is a cycle of punishment placed upon them, thereby diminishing their sense of belonging and reducing their opportunity for educational equity; and

Finally, the conclusion of retention research is that the academic benefits of retention are limited, short-lived, and far outweighed by the negative consequences on a student's development of reading, writing and all other aspects of literacy.

The proposed 6.19.9 rule change should be discarded. It is a misguided, punitive mandate and will not improve the ability of each New Mexico child to read with comprehension effectively.

The New Mexico Public Education Department should direct its reading instruction efforts to expand funding directly to school districts for qualified reading personnel and in-house instructional coaches, provide extensive professional development opportunities for expanding the instructional capacity of early childhood teachers and staff, provide extensive professional development training in parent education and engagement opportunities where appropriate, and collaboratively dialogue with all New Mexico school districts to implement plans that insure improvement of reading instruction not mandate it through an inadequate rule proposal.

Lake Arthur Municipal Schools therefore definitely opposes this rule as a means to improve student reading proficiency and strongly recommends that the New Mexico Public Education Department withdraw this inadequate early literacy rule from consideration.

Respectfully,

  
Michael Grossman, Superintendent

## I OPPOSE 6.19.9 NMAC on Early Literacy

Sarah McKinney <sarah.a.mckinney@gmail.com>

Fri 5/11/2018 9:19 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

I strongly oppose the proposed rule regarding early literacy. This rule is attempting to implement approaches to early childhood education and literacy instruction that have been roundly rejected by our communities of educators and families and by our elected officials through the legislative process. It is an overstep for PED to now try to sneak these provisions into rule. The proposed rule goes against current research on how young children learn, the benefits and risks of retention, and how our educators can best support students who struggle. The rule would also further solidify the over-reliance on narrow measures of student achievement and the big business of textbook and standardized testing corporations. Our children deserve better than this.

Sincerely,

Dr. Sarah McKinney

## 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Bonnie Murphy <bonniej146@yahoo.com>

Sat 5/12/2018 9:02 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

 1 attachment

6.19.9-NMAC\_Proposed-Rule\_Input\_Bonnie Murphy.docx;

Dear Policy, Innovation, and Measurement Bureau Staff,

Thank you so much for the opportunity and honor to provide input on the creation of these rules for the benefit of our state's student population, school staff and regulatory institutions in New Mexico's Public Schools.

Attached is the proposed rule document with my input through edits, comments and references pertaining to the Proposed Rule for Early Literacy Remediation, Interventions, and Parental Engagement.

Most Sincerely,

Bonnie Murphy  
Currently: Elementary Reading Interventions Teacher &  
Special Education Case Manager  
MAS Charter School  
Soon to be: Student Supports Coordinator  
Albuquerque Collegiate Charter School  
cell# (505) 264-2401

“Your life doesn't get better by chance. Your life only gets better by change.” Jim Rohn

**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]

*A. Remediation programs, academic improvement programs and promotion policies shall be aligned with alternative school-district-determined assessment results and requirements of the assessment and accountability program.*

*I believe this makes it clear that academic improvement programs and promotion policies should be aligned with school-district-determined assessment results and an assessment and accountability program so creating this new rule is legal and brings clarity to the issue at hand. Schools need more formal guidance in this area; however the school boards need more transparency on their positions and recommendations, more input from parents and staff members, who often have the most up-to-date training and research-based strategies. They also have the most contact with families and students, so the conversations need to be more accessible to those outside of the board whose decisions affect them. Please, provide documentation about where school board decisions are kept, so that the public can look at them, either to decide if they want to place their children in that particular school organization or if they want to work at that school organization.*

**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” (AIP)** means a written document developed by the Student Assistance Team (SAT) that outlines the grade-level literacy content not mastered by the student, and that prescribes specific interventions and 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~~ state-approved assessment required for student literacy that diagnoses and regularly measures the acquisition of reading skills, including listening comprehension (very important for ELs), phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency (subject to grade level) to be given a minimum of three times during the academic year. *Istation only gives Listening Comprehension (LC) assessments to Kindergarteners. First –Third Graders are not provided with LC assessments, even if they are lacking these skills. Also, Fluency is not given to prior to 1<sup>st</sup> Grade in January. Many Istation subskill assessments are not given unless the student either shows a need for remediation or a need for advancement.*

**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-skill performance indicators.

**E. “Intervention”** means the intensive targeted instruction of individual students or small groups of students documented in Tier 1-Tier 3 data collection for SAT, EL, and IEP progress monitoring, as determined by student performance on the benchmark assessment.

**6.29.1.7 DEFINITIONS:**

**BX.** *“Response to intervention (RtI)” means a multi-tiered organizational framework that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a system for making educational programming and eligibility decisions. It is a continuum of school-wide support that contributes to overall comprehensive school improvement efforts. In New Mexico, the RtI framework is called the “the three-tier model of student intervention.”*

**6.29.1.9 PROCEDURAL REQUIREMENTS:**

**E.** *Student intervention system. The school and district shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior.*

**(1)** *In tier 1, the school and district shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status and academic levels of proficiency has been completed for each student enrolled. If data from universal screening, a referral from a parent, a school staff member or other information available to a school or district suggests that a particular student needs educational support for learning or behavior, then the student shall be referred to the SAT for consideration of interventions at the tier 2 level.*

**(2)** *In tier 2, a properly-constituted SAT at each school, which includes the student's parents and the student (as appropriate), shall conduct the student study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing curriculum-based measures. As part of the child study process, the SAT shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties. The SAT shall create no undue delay for full initial evaluation to determine eligibility for special education for a student who is identified as homeless or in foster care under the state's foster care system or based on criteria to assess housing stability status under the federal McKinney-Vento Act and the 2015 ESSA Title IV, Part B, due to the high mobility of this specific population group. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis, which may include a referral for a full, initial evaluation to determine possible eligibility for special education and related services consistent with the requirements of Subsections D-F of 6.31.2.10 NMAC and federal regulations at 34 CFR Sec. 300.300.*

**(3)** *In tier 3, a student has been identified as a student with disability or gifted under the state criteria for giftedness deemed eligible for special education and related services, and an IEP is developed by a properly-constituted IEP team, pursuant to Subsection B of 6.31.2.11 NMAC and federal regulations at 34 CFR Sec. 300.321.*

**(4)** *The department's manual, the student assistance team and the three-tier model of student intervention, shall be the guiding document for schools and districts to use in implementing the student intervention system.*

**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 academic improvement.

**H. "Retention Waiver"** means a document/letter that a parent is able to sign to indicate whether they consent or do not consent to their child being retained in the current grade for the next school year with an AIP.

**"Student Assistance Team (SAT)"** means a group consisting of a student's:

- (1) the school's SAT Chairperson**
- (2) the student's Reading teacher(s);** *our school currently has 4-6*

*Reading Teachers per class for K-1, 6-7 Reading Teachers per class in 2<sup>nd</sup>/3<sup>rd</sup> grades (and will likely have the same model for 4<sup>th</sup>/5<sup>th</sup> grades next year when those grades are added) and 1-3 Reading Teachers per class in middle school classes.*

~~school counselor;~~ *our school does not have a school counselor, just a social worker that is not allowed to do social work, even for the students*

on her IEP caseload because she is doing Truancy and Attendance per a grant received by the school

- (3) a school administrator or coach with training in RtI; and  
 (4) the student's parent or legal guardian, if they choose to participate;
- and
- (5) who all follow the guidance contained in the state's manuals for RtI and SAT.

**TITLE 6            PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 29       STANDARDS FOR EXCELLENCE**  
**PART 1             GENERAL PROVISIONS**

**6.29.1.7            DEFINITIONS:**

**CM.**     *"Student assistance team (SAT)" is a school-based group of people whose purpose is to provide additional tier II support (consistent with requirements of the three-tier model of student intervention provided in Subsection ~~D~~E of 6.29.1.9 NMAC) to students who are experiencing academic or behavioral difficulties that are preventing them from benefiting from general education, because they are either performing below or above expectations. (Public agencies may have similar names used for this team, such as "student success team" or "student support team.")* **Emphasis through underlining added by me. This statute definition has a typo in it! Interventions are not addressed in Subsection D (child abuse and neglect), but Subsection E (student intervention) of 6.29.1.9 NMAC! This needs to be corrected or it holds no weight! See above,**  
**6.29.1.9            PROCEDURAL REQUIREMENTS:**

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

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

**A.** The **state** 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 (AIPs) 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~~ AIPs align with **state** department guidance and evidence-based best practices. The department may request to review student ~~academic improvement plans~~ AIPs at any time.

**C.** The determination of a student's literacy strengths and weaknesses **at End of Year (EOY)**, 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 **and the**

SAT shall also direct the use of daily intervention, remediation, or alternative programming.

**D.** For ~~kindergarten~~ **the statute doesn't say Kindergarten, only grades one through eight, so this is why schools need to be using Rtl and the SAT process beginning in 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 **currently in attendance who are** not proficient in reading, as determined by the middle of year benchmark assessment; *our population of students is highly mobile, parents are showing propensity to take their child out of a school who have received a notice of non-proficiency and place them in another school they believe will help their child succeed, sometimes this is the first year and sometimes this is the second year they have been notified.*

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

**(c)** number of students with Individualized Education Plans (IEPs) with Reading Goals who are not proficient in reading;

**(d)** 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 **still currently in attendance who are** not proficient in reading, as determined by the end of year benchmark assessment; and

**(b)** number of students who are no longer in attendance who were not proficient in reading, as previously determined by the middle of year benchmark assessment;

**(c)** number of students who are now not proficient in reading that were not identified by the middle of year benchmark assessment, either because they were not in attendance or because their reading scores declined at any point after the middle of year assessment. *We have students who were proficient all year long and then were not proficient in the EOY assessment. This is a dilemma, much like another dilemma that appears to need guidance. What if there are students who are at the 42<sup>nd</sup>%, so they are technically Tier 1, but teachers and/or administration is recommending they are recommended for retention and the State Retention Notification Letter is being used to tell parents that the State is mandating their child be retained, when the PED is NOT recommending retention of students who ARE technically proficient in reading? How can we justify recommending retention for students who are proficient in reading, even if it is by a slim margin? I am not asking you to answer that question. My professional opinion is that it should be against the law for LEAs to do that. If a student is proficient and close to not being proficient, then a SAT plan needs to be developed to take effect immediately for the following school year, whether the student is at the same school or not.*

**(d)** number of retention waiver letters signed by parents or legal guardians of students not proficient in reading **as determined by the end of year benchmark assessment.**

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

**(a)** number of **returning** students retained as a result of not being proficient in reading, as **previously** determined by the end of year benchmark assessment **and in the June 1 data submission to the department;** *the August 1 deadline would typically be no different from the June 1 deadline because quite often, the students who were recommended for retention and their parents waived or didn't waive will*

*register for the following school year and then not show up when the new school year starts, so the secretaries are busy calling to try to verify if they are attending the school or not and if not, they will give notification of the open spot and allow another student on the wait list to enroll.*

**(b) number of newly enrolled students retained as a result of not being proficient in reading, as previously determined by their prior school's end of year benchmark assessment and who either 1) their parent or legal guardian consented to retention, or 2) did not.** *Who is enrolled and is in attendance or not that has been recommended for retention will not truly be determined until after school has officially started, which is going to be Aug. 13<sup>th</sup> this year, so I would suggest allowing for a couple of weeks each year for actual enrollment data to be recorded and the documentation to be prepared prior to a September 1 submission. Also, it can take a couple of weeks for the student's cumulative file to be transferred to the new school when they transfer to a new school, and there HAS to be a better way of informing the next school about the students' retention recommendations and waivers, SAT and/or IEPs, so that the data is reported and is accurate. There is a hole, a flaw, in that this retention information, as well as SAT and IEP information, is typically not timely enough to be used for accountability and assurance of proper differentiation of instruction and interventions to start the year out right, helping students. When a student has transferred into the school and takes their BOY Istation assessment, it is usually apparent if they were proficient the school year before and may have had a retention recommendation or not. If schools had students take their Istation assessment when they start school, during August, before the BOY assessment, there would be a good heads up about if they were proficient or not and the retention information could more likely be obtained before a September 1 submission. I would recommend another column on the literacy data reporting document that differentiates these two categories. In the future, this information will most likely be streamlined to schools through STARS or some other electronic means, so that parents and families are not unwittingly encouraged to unnecessarily and further increase the complications that ensue for students from high levels of mobility. Having this information readily available would be of great benefit for school and teacher planning and instruction for the best start to the school year for that student.*

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

~~**(d)**~~ **(d)** *number of students reading at performance level one, according to his or her grade three individual student report; I am not sure what performance level one is (a generic term for Tier 1 on Istation?) This needs to be explained more clearly, since Tier 1 is the beginning of the SAT process, Tier 1 is proficient on Istation, and there are other uses for level one or tier 1.*

**(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; Hopefully, this portion of the data literacy document will be utilized this year, since the MOY notification meetings (not SAT, just a meeting with a parent and principal, a parent and coach, a parent and teacher, a parent, principal, and teacher, or a parent, principal, teacher, and coach but very rarely this last scenario) contained additional reasons such as age, developmental level, EL status, and teachers also took into consideration another assessment, STEP, and iREAD data, which are mentioned in the 2<sup>nd</sup> letter, the notification letter from the school. Unfortunately, nearly all of these meetings did not contain written information for parents about SAT (there wasn't one, usually), IEP goals in Reading (not acknowledged, usually), and did not include progress reported on a specific AIP (there wasn't one developed).*

**(e)** *copy of the LEA's retention waiver letter(s) template(s); there were 2 at our school and early on when they were sent in for approval, they were denied by Melinda Webster because the wording was changed from the template that the Bureau had drafted for all schools to use and did not communicate the policy guidance or statutes for retention that were provided from the department.*

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

[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~~ **beginning** of year **required state** benchmark assessment, the student's teacher shall notify the student's parent or legal guardian formally, in writing, **within two weeks** and hold a parent-teacher conference. *Mid to end of February is not soon enough to inform families and engage them. Research shows that difficulties students have in school can be avoided or at least minimized through parent and/or family engagement in the child's education, so why wait until nearly 2/3 of the school year is over (especially in a school that may only have significant parent engagement on P/T Conference nights, where all surveys are filled out). Why not engage them early and use the Quarter 1 P/T Conferences as opportunities to report on progress?*

(1) Written notification shall include:

- (a) student performance on the benchmark assessment and ongoing progress monitoring;
- (b) specific **data driven and documented Tier 1 classroom** interventions implemented to-date;
- (c) strategies for parents or legal guardians to implement at home; and
- (d) **future** parent or legal guardian options including:
  - (i) daily **intensive** intervention **implemented through a SAT process**;
  - (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 **through data-driven Tier 1 or, if necessary, Tier 2 classroom interventions that will should** lead to student proficiency in reading by the end of the academic year; ~~and~~
- (d) **a timeline of when documentation will be provided (at least once per month and at each quarter) to inform parents or legal guardians** whether or not the student is on track to be college and career ready as measured by **progress monitoring and a date scheduled to review the student's** mid-year benchmark assessment ~~and~~
- (e) **if a student was not proficient the year before, whether retained or not retained, then a SAT process will take place for this student at this parent/teacher conference.**

*Copied from above*

B. If a student is not proficient in reading as determined by the middle of year **required state** benchmark assessment, the student's teacher shall notify the student's parent or legal guardian formally, in writing, **within two weeks and with a reminder of the previously scheduled date to hold a parent-teacher conference (for those whose children are significantly on target) or a SAT meeting (for those whose children have made little progress and who are still not proficient) to review their child's performance documentation. The state RtI and SAT guidance documents and manuals shall be followed.**

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

- (a)** student performance on the benchmark assessment and ongoing progress monitoring;
- (b)** specific **data driven and documented Tier 1 classroom or Tier 2 intensive** interventions implemented to-date; *this is important to note, because in the RtI and SAT process, interventions must be conducted first in the general education classroom for students without IEPs or who are not already on a SAT plan, so although it may be obvious to some, it is not always understood, communicated, or implemented properly. Classroom interventions, especially in schools with a co-teaching model, have been proven to be the most effective delivery for the majority (80%) of students in need. Pull-out, even more targeted Tier 2 and 3 interventions should be focused on the 15-20% that do not respond to Tier 1 interventions, for those who have an IEP with a Reading Goal that needs Tier 2 interventions, for students in SAT who need targeted Tier 2 Reading Interventions, and for ELs who need additional appropriate Reading Interventions beyond what they should be receiving in the classroom with their peers.*
- (c)** strategies for parents or legal guardians to implement at home; *this is actually important because sometimes a student reaches proficiency in the previous skills discussed and targeted and is now working on the next skills in the systematic and explicit teaching of reading, so parents and legal guardians need to know how to continue to support them and even if they are on target, we want them to keep making forward progress and not fall behind again* and
- (d)** future parent or legal guardian options for students who are still not proficient including:
  - (i)** daily intensive intervention implemented or continued through Tier 2 in the SAT process;
  - (ii)** remediation; or
  - (iii)** alternative programs.

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

- (a)** the student's performance in comparison to grade-level literacy standards;
- (b)** assessment results that indicate if the student is or is not on track to meet literacy benchmarks;
- (c)** a timeline of when documentation will be provided (at least once per month and at each quarter) to inform parents or legal guardians whether or not the student is on track to be college and career ready as measured by progress monitoring and a date scheduled to review the student's end of year benchmark assessment-and
- (e)** if a student is not proficient, whether retained or not retained, then a SAT process will take place for this student at this parent/teacher conference.
- (f)** in the case that the SAT suspects a disability requiring a Tier 3 or Special Education Diagnostic Evaluation, the parent or legal guardian will be provided with the Parent Rights and Responsibilities IDEA document and a consent form that shall be returned after a minimum of 2 days have passed to give the parent or legal guardian time to consider the options available and ask questions, in order to be properly informed of the decision they are making for their child that will affect their child for the rest of their lives.

**C. A The Student Assistance Team (SAT) shall develop an Academic Improvement Plan (AIP) for any student not proficient in reading as determined by the beginning of year benchmark assessment for students who are significantly behind and by the middle of year benchmark assessment for students who are not proficient. The Academic Improvement Plan shall clearly outline formal Tier 2 interventions, progress monitoring activities, delegation of responsibilities for those interventions and associated timelines to ensure student progress toward achieving grade-level literacy proficiency. The state guidance manuals for SAT and RtI shall be followed and if the child is**

determined to need an IEP through the SAT recommendation of testing for a possible disability, the IEP would not replace the AIP.

**D.** If a student is not proficient in reading as determined by the middle of year required state benchmark assessment, the student's teacher shall notify the student's parent or legal guardian formally, in writing, within two weeks and with a reminder of the previously scheduled date to hold a parent-teacher conference (for those whose children are not proficient) or another SAT meeting (for those whose children have made little progress and who are still not proficient) to review their child's performance documentation and a retention recommendation meeting. The state RtI and SAT guidance documents and manuals shall be followed.

(1) Written notification shall include:

(a) student performance on the benchmark assessment;  
 (b) specific data driven and documented Tier 2 intensive 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; or  
 (e) in the case of the parent or legal guardian either not consenting to retention through a retention waiver or consenting to retention on the waiver form for the next school year,

(i) continued daily intensive intervention implemented through Tier 2 and the SAT process the following school year;  
 (ii) summer remediation; and/or  
 (iii) alternative programs.

(d) in the case that the SAT suspects a disability requiring a Tier 3 or Special Education Diagnostic Evaluation, the parent or legal guardian will be provided with the Parent Rights and Responsibilities document and a consent form that shall be returned after a minimum of 2 days have passed to give the parent or legal guardian time to consider the options available and ask questions, in order to be properly informed of the decision they are making for their child that will affect their child for the rest of their lives.

(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.E.** 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. *How is this going to work? I know there is a roster provided to review to see whose scores will be included on a teacher's evaluation, the school's evaluation, and the district's evaluation, but what is the mechanism for the scores to be provided to these teachers? This would be useful information!*

[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 all of the student's Reading teacher(s) to the school principal indicating why promotion is or is not appropriate. Documentation required shall include the reason for or against exemption and an existing academic improvement plan, SAT plan or IEP.

**C.** The school principal or designated school administrator shall review and discuss the recommendation with the team of student's teacher(s), and parent or legal guardian(s), and through the SAT or the IEP Team to determine whether or not the student qualifies for the requested exemption. If the school principal the team determines that, based on the provided documentation, the student qualifies for the requested exemption, the school principal or designated school administrator shall make such a recommendation in writing to the superintendent, if applicable or charter school administrator. The superintendent, if applicable, or charter school administrator principal or designated school administrator shall accept or reject the recommendation in writing. If accepted, the superintendent, if applicable, or principal or designated school administrator will report to the department, in writing, the acceptance or denial, including providing all of the above mentioned documentation in sections 6.19.9.9, A-E, and 6.19.9.10, A-C.

[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, and

(4) Gifted testing, if requested in writing.

**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 in a team with public staff, board, parent and legal guardian school engagement team input, and with Gifted Endorsed teacher input, in accordance with Special Education, Gifted, IDEA and NM State guidance, laws and policies, the 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.~~ *Schools are required by law to provide for that student's needs, not tell them they have to go somewhere else because we don't differentiate or scaffold instruction here, or this will happen in other areas of education and student needs, such as student with disabilities, and will be transferred away from a school because of behavior, academic struggles, etc. This is a Pandora's box, if it gets opened. We know, because we have dealt with all of this recently and have also had way too many parents asking for their child to be tested for Gifted or Autism or something or provided with acceleration and the principal/superintendent decides they don't necessarily believe in Gifted or they need to wait and wait with a lower level of education that doesn't nurture that child's gifted needs, so a child languishes in their predicament for up to two years without going through a SAT process or a Gifted evaluation, so this should not be a decision that LEAs (if they are just one charter school or even a district superintendent) should be able to make by themselves without oversight from state guidance documents like the SAT manual or the RtI manual. Currently, we have non-individualized IEP Goals for Gifted high school students that are generic and all say the same thing because of the decisions of administration from the principal/superintendent to the special education director, so the Gifted students don't even get necessarily what they need and their test and dual credit scores and grades show that their strengths are not being nurtured.* Student eligibility requirements and procedural requirements established by the **LEA team** shall be included in the LEA's comprehensive student progression plan. *If schools were adhering to the policies that are actually in place already, like following a SAT, RtI, Gifted Manual, Developing IEPs Manual, etc., then all of this would be unnecessary. Our NM policies and guidelines already provide these options, but schools don't follow them.*

**B. School principals in a team with public staff, board, parent and legal guardian school engagement team input, and with Gifted Endorsed teacher input, in accordance with Special Education, Gifted, IDEA and NM State guidance, laws and policies,** 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 team**, the student shall be provided the opportunity to participate in the acceleration option.

**C. When ~~establishing~~ considering individual student eligibility requirements for acceleration, principals and LEAs shall consider, with input from Gifted Endorsed staff and the parent,** 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;~~ *not having this option*

*of acceleration could be the very reason that the student's attendance and conduct are being triggered, the antecedent to a behavior that affects negative consequences. A student is not able to control their attendance in K-3<sup>rd</sup>.*

*They rely on adults for transportation, so it is not expedient to punish them for the adult, who may be struggling with poverty. This appears to be a civil rights issue. There are schools that provide proper incentive and attendance is very high, regardless of demographics, but even those schools have attendance issues with even the brightest of the student population as a result of poverty. The school also goes to great lengths to make sure there is transportation provided with government funding or state funds, however if the funds are not provided, the student should not be punished for a state's budget downfalls or for possibly re-prioritizing the funding unwisely (not to say that is*

*necessarily happening right now). If a possibly Gifted student is denied access to acceleration because of their conduct, this could be a legal discrimination and a federal offense.*

(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, **or the student's social worker or private counselor**; and *again, our school doesn't assign or provide school counseling, so our students have to get counseling services outside of school and parents have to pay for it.*

(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]

# Early Literacy Remediation, Interventions, and Parental Engagement Feedback

Arturo Lujan Lopez <alopez@sfps.k12.nm.us>

Mon 5/14/2018 8:49 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

I believe that in order to fulfill our responsibility as educators, we must ensure that we exhaust every possible resource to make our scholars succeed. Reason why I believe that no student should receive a letter of retention unless Tier 2 interventions have been implemented in the remediation process. I have seen too many colleagues not providing the necessary supports and just letting our kids fall through the cracks while telling the parents that they implemented interventions. SAT leaders should verify that those interventions are taking place.

--

**Arturo Luján**

*Dual Language Teacher*

César Chávez Elementary School

(505) 467-3200

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# Untitled

Robert Lamm <r.lamm@tucumcarischools.com>

Mon 5/14/2018 9:04 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

These rules already exist in the form of PARCC test requirements. Students, teachers, and parents know exactly where the student is with regard to reading and writing based upon the reports that are generated from PARCC. What purpose will these new rules serve? Are we actually going to hold kids back a grade until they perform literacy skills at that grade level? If something isn't going to be done with consequences to the student and family, then this rule is just another layer of bureaucratic waste that teachers must jump through in order to perform no good for anyone but to justify the jobs of those who are writing and administering the rules.

Are these rules designed to hold teachers accountable? If so, aren't we already being held accountable through the teacher micromanagement system (politically called the teacher evaluation system).

If you want to continue justifying your job, rather than creating more inane rules, perhaps you could give the teachers more support. How?, you ask. Good Question!!! How about holding students back when they don't perform to teacher expectations (not even really teacher expectations since the State has usurped that authority as well)? How about penalties and consequences for families and students when the student doesn't perform? The State is pretty handy at micromanaging schools and teachers, how about exerting some of that muscle on the families? If the family doesn't value education, then no number of rules that you impose on teachers is going to affect that change in attitude. However, hit parents where they live, their spare time, their pocketbook, their freedom (yes, they can serve jail time on the weekends if they aren't supporting their child educationally). They can pay the school for extended school time to compensate teachers when their kids don't perform during school hours, and yes they can come to school with their kids in the evenings and work with their kids. Make it matter to the parents, and it will matter to the kids. Until it matters to the parents, it won't matter to the kids.

In conclusion, don't hurt teachers, they are your friends. Hold parents accountable. Students behaviors, attitudes, and ethics are reflective of those taught and held closely by the families that are raising them. Affect a change of these attitudes and behaviors and you will have yourself a whole new education system. Keep trying to

change teachers, you are going to run out of teachers and have a whole lot of baby sitters.

Respectfully Submitted,  
Robert Lamm  
Special Education Teacher  
Tucumcari Public Schools

reading

Tena Joslin <tjoslin@fms.k12.nm.us>

Mon 5/14/2018 9:26 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

 1 attachment

DAP.docx;

**In response to:** The PED is proposing a rule related to Early Literacy, and we would love your feedback as part of the rulemaking process. You know firsthand how important it is to ensure all of our children receive the reading instruction and support they need and that parents are informed and involved in their children's learning, so your comments about these processes to support early literacy will make a real difference.

Thank You,  
Tena Joslin  
Sped ELA 9-12

## Points to keep in mind when developing criteria for Early Literacy Intervention.

1. DAP (Developmental Appropriate Practices) must be consider. Although some children are ready to read early than others, we as educators must understand Piaget's developmental stages. They hold true and if we force students to read before they are ready they will become frustrated and not likely try to read as they become older and ready to do so.
2. With this in mind there are a number or early literacy experience to prepare students for reading when they cognitively able. Exposure to literature in all aspects (reading, science, social studies, social skills, etc.) can be provided through reading to students, setting play areas so they can role play what has been read to them. Also provide play experiences that allow role play with various toys that encompass certain themes such as dinosaurs.
3. Language development is essential to reading. Allowing verbal interaction of students that is teacher directed as well as verbal teacher directed learning that uses word-based visuals during these lessons will increase student's reading ability. We must keep in mind students cannot comprehend words they do not know. So many times, emphasis on reading often overlooks language development. This includes vocabulary as well as grammar rules and word order. It also includes understanding that stories contain

certain elements. All this needs to be taught verbally and developed in a DAP setting before expecting a child to complete worksheet/workbook-based learning. So often many programs skip this level and students may become good decoders but not true readers as they lack the vocabulary and comprehension skills to understand and process the text.

4. Again, we as educators must remember all students do not develop at the same rate or learn the same way. Multi-modality learning is important in reading development and that does not take place just sitting at a desk completing reading/workbook materials. Learning is experiential and for many we learn by doing.

I know being a good reader is so important, but we are in a world where people/families range from extreme tech knowledge to non-readers, so our students enter school with varied abilities. A class room must address this as well. Kids want knowledge and are curious by nature. As educators we must use their interest and desire to learn rather than make them feel “not smart” and stressed. As a special educator and past SLP, I have seen this occur to many times, but I have also seen the successes where students were engaged appropriately and they became great readers and writers.

## Fwd: opposition to Rule Change 6.19.9 NMAC

Ellen Ben-Naim <[e.ben-naim@laschools.net](mailto:e.ben-naim@laschools.net)>

Mon 5/14/2018 9:38 AM

To:FeedBack, Rule, PED <[Rule.FeedBack@state.nm.us](mailto:Rule.FeedBack@state.nm.us)>;

 1 attachment

Rule Change 6.19.9 NMAC public input 05.13.18.pdf;

----- Forwarded message -----

From: **Ellen Ben-Naim** <[e.ben-naim@laschools.net](mailto:e.ben-naim@laschools.net)>

Date: Sun, May 13, 2018 at 8:49 PM

Subject: opposition to Rule Change 6.19.9 NMAC

To: [C.Ruszkowski@state.nm.us](mailto:C.Ruszkowski@state.nm.us)

Dear Secretary Designate Ruszkowski,

Attached you will find my public input letter opposing Rule Change 6.19.9 NMAC. While I do believe we need to address to the high numbers of students in the early grades who are not proficient in reading, this rule change will only cause more damage and will not help struggling students.

Thank you for considering my input.

Sincerely,

--

Ellen Ben-Naim,  
Vice President, Los Alamos Public Schools Board of Education  
505-670-8153

--

Ellen Ben-Naim  
505-670-8153

**Ellen Ben-Naim**  
**Vice President Los Alamos Public Schools Board of Education**  
**2075 Trinity Road**  
**Los Alamos, NM 87547**

Christopher Ruskowski  
Secretary-Designate  
New Mexico Public Education Department  
300 Don Gaspar  
Santa Fe, NM 87501

May 11, 2013

Re: Opposition to Rule Change 6.19.9 NMAC

Dear Secretary-Designate Ruskowski

I am the School Board Vice President for the Los Alamos Public Schools. I am writing to you to voice my strong opposition to Rule Change 6.19.9 NMAC. It is ill conceived, contrary to all evidence and best practices and it conflicts with state statutes.

The PED tried for the past 7 legislative sessions to pass similar measures, and the legislature wisely declined to support these harmful bills. This rule change appears to be a last ditch effort to impose damaging policies.

**RETENTION HARMS CHILDREN:** Numerous studies show that retention has a negative impact on students' academic growth and social/emotional well-being and only increases the likelihood of dropping out of high school. Research shows multiple harmful outcomes of grade retention.

**LOCAL SCHOOL DISTRICT AUTONOMY:** This rule change undermines local school boards' autonomy to use multiple assessments and make case by case decisions on whether to retain a student. The same is true for students who may be able to skip a grade. Furthermore, the rule change contradicts state laws. Current law requires remediation programs, academic improvement programs, and promotion policies to "be aligned with school-district-determined assessment results..." (Subsection A of Section 22-2C-6 NMSA 1978).

**ONEROUS UNFUNDED REPORTING REQUIRMENTS:** This rule change is an unfunded mandate for a slew of reporting which hinders teachers' ability to provide their students with remediation and targeted intervention for their most vulnerable students. Do you want teachers to spend extra time with struggling students or pulling their hair out over endless paper work?

These are only the most glaring problems with this rule change, and there are quite a few other pitfalls. I strongly urge the PED to rescind Rule Change 6.19.9 NMAC.

Sincerely,

Ellen S. Ben-Naim  
Vice President, Los Alamos Public Schools Board of Education

## 6.19.9 NMAC Early Literacy Remediation, Interventions, and Parental Engagement

Hope Morales <morales\_hope@yahoo.com>

Mon 5/14/2018 1:42 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

I write to you today as a mother of 3 children. My oldest son was born in late July, making him the youngest in his Kindergarten class. He was a very quiet boy, who was well behaved, and struggled, especially with reading/writing. His teacher offered tutoring, which we took advantage of and I worked with him at home. He was not confident in class and because he was so well behaved, I was afraid he would be overlooked and fall further behind. I had meetings with his teacher and district administrators. I compared his work with his peers who were "on grade level" (not advanced) and he was far behind. I requested that he repeat Kindergarten, but because the "proper paperwork" had not been complete and because "he was a boy," my request was denied. I had the same concerns in first grade and went through the same steps. Although his teacher acknowledged he was behind and stated she was doing interventions with him, a SAT was still not complete and I was unable to have him held back in first grade. I was a newer teacher in the district and was afraid to speak out too much and put my job in jeopardy. I was torn. I continued to work closely with his teachers to try to get him on grade level. He remained a quiet boy, with low academic confidence, and well behaved. He was acknowledged each year for "character awards," but never received anything for academics.

My husband and I decided our son would be held back in elementary school, before he got to middle school where the standards would advance and his GPA/proficiency would matter for future opportunities. I was no longer a newer teacher in fear, I was an advocate for my son and demanded he be held back in 5th grade. After meeting with the Assistant Superintendent of my district, my request was approved. During his second year in 5th grade, for the first time ever, he received A-B Honor Roll. He fit in well with his peers and he began to develop a confidence he had never had before.

I am happy that we made the decision to hold my son back and see the variety of benefits it has had, included improved academic performance and confidence. I am angered that I was not able to accomplish this in his earlier years of schools.

Parents deserve to be part of this very important conversation. As a teacher, I understood the need for my son to be retained so he would be better prepared. For parents who work outside of the schools, we must ensure proper communication and support is in place to ensure the best collaboration possible.

Thank you,  
Hope Morales

## 6.19.9 NMAC Early Literacy Remediation, Interventions, and Parental Engagement

ostrichteacher@gmail.com on behalf of Leslie Baker <lesliebaker115@gmail.com>

Mon 5/14/2018 4:40 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

 1 attachment

ProposedRuleEarlyLiteracy.docx;

Jamie Gonzales, New Mexico PED

I am writing to express my concern about the proposed rule that would mandate retention for students in K-3 who are below benchmark on one standardized test at the end of the year. I strongly oppose this rule based on my 25 years as an elementary school teacher, a parent of three children who attended public school, and a SAT Committee Chair tasked with considering data and student success when making decisions about how to best help a child struggling to read. As a current K-3 reading interventionist and coach, I see firsthand how students can make gains in a short amount of time and cannot be accurately judged by one computerized, short assessment.

When talking about primary grade children, I believe that we must focus on developmental stages. Often students are not developmentally ready or able to demonstrate mastery in a certain area but easily assimilate knowledge and skills the next year and catch up to their peers. Excellent teachers are key to this change: they meet students where they are and take them to benchmark and beyond using differentiation and explicit instruction. We educators are trained to look at all of the data points and not just one 25 minute test at the end of the year, because we know from experience that strong students can have a bad day. If I were forced to look at just one test (EOY) to determine that child's future placement, I would be hard pressed to make a good decision. I would certainly feel that my professional judgement and knowledge were not valued or utilized. It is a formulaic, robotic way to try to improve early literacy outcomes and the child is the victim.

In my experience, young children who are retained in the first few years of their schooling may in fact have a learning disability that has not been diagnosed yet because of their age and development. I have personally witnessed the negative effects of retention on many, many young people. Also, I have read the research on this topic:

From ASCD, March 2008, Vol 65, No. 6  
What Research Says About Grade Retention by Jane David:

"Retention can increase the likelihood that a student will drop out of school. Students who drop out are five times more likely to have been retained than those who graduate (National Center for Education Statistics, 2006)."

"Although individual studies can be cited to support any conclusion, overall the preponderance of evidence argues that students who repeat a grade are no better off, and are sometimes worse off, than if they had been promoted with their classmates."

"A major weakness in the research on retention is documenting the educational experiences of students who are retained. Roderick & Nagaoka (2005) argue that retention under high-stakes testing presumes the problem lies with the student, not with the school. If the goal of retention is to provide an opportunity for students to catch up, the quality and appropriateness of their academic experiences is likely to be the determining factor. After all, why should repeating the same experience produce a different result?"

In addition, this rule is problematic for small charter schools such as mine that have just one class per grade. Students who are retained are placed with the same teacher for a repeat of the same curriculum and program. Openings for students in each class are made in early April through a lottery system, so it is impossible to provide 3-5 extra spots for retained

students in August. If this rule is passed, this would be the mandated situation and would be unworkable. As it currently exists, we make retention decisions prior to April looking at multiple data points and the child's needs. If this becomes law we would not be using best practices but a one-size-fits-all approach.

If this rule's intent is to improve parent communication as well as differentiation in the early grades, let's focus on those goals but not at the expense of a young student. It seems to me that we are attempting to penalize students for the failures of the schools. Most importantly, let's not put it all on one EOY test. What happened to holistic education and looking at the whole child?

I am attaching the proposed rule with my comments highlighted.

Thank you,

Leslie Baker  
Taos, NM

**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. This objective is written to indicate that parents are aware of their options, not that schools must retain students who are below a set benchmark on just one data point. It is misleading, in my opinion.

[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. This uses the term option but it seems like it is in fact mandated the second year after the waiver.

**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 (we found that some students who were proficient all year dropped at the end of the year after test fatigue from PARCC and MAP assessments which are very long. To base everything on the EOY Istation puts undue pressure on students and teachers at a difficult time of year.), 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.

Charter schools with just one class per grade and a lottery enrollment process will not be able to accommodate late year retentions of multiple students. Repeating a grade with the same teacher in these small schools does not help a student. Differentiation models and training will help teachers to help students more than mandated retention. Research shows that retention can be very detrimental to a student's success and has proved to be negative in many instances in my experience as a teacher.

(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. Considering retention in kindergarten and the primary grades does not allow educators to differentiate and follow the Response to Intervention model that helps us determine if a student has a specific learning disability. By rushing retention, potential SPED students will be held back.

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. By focusing on just one test and not monthly progress monitoring or past results, teachers may be required to retain a student who is proficient. Istation is a fast-paced test and young children will sometimes drop significantly on a given test on which they had previously scored very high. Young students with sensory issues and attention issues struggle to show what they know. I believe that the guidelines for retention should consider more than just one data point.

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]

## Written Comments on PED's Proposed Rule on Retention

Bethany Pendergrass <bethany.pendergrass@rrps.net>

Mon 5/14/2018 4:51 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Cc:Happy Miller <happy.miller@rrps.net>; Carl Leppelman <carl.leppelman@rrps.net>; Elizabeth Jacome <elizabeth.jacome@rrps.net>; Cleveland, Dr. Sue <sue.cleveland@rrps.net>;

 1 attachment

Comments on proposed rule on retention.pdf;

Good afternoon,

Please see the attached **written comments on PED's proposed rule on retention.**

Thank you,

Beth Pendergrass

Chief Communications, Strategy and Engagement Officer

Rio Rancho Public Schools  
500 Laser Rd. NE  
Rio Rancho, NM 87124  
Office: 505.896.0667





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May 4, 2018

Christopher N. Ruszkowski  
Secretary  
NM Public Education Department  
300 Don Gaspar Avenue  
Santa Fe, NM 87501

Secretary Ruszkowski:

Rio Rancho Public Schools (RRPS) is committed to rigorous standards, guaranteed and viable curricula, and the use of data to improve instruction. However, we have some concerns about the proposed Literacy Promotion Practices rule (NMAC 6.19.9). These concerns are related to two central issues contained in the proposed rule: retention and acceleration.

**Concerns with blanket determinations of retention.**

RRPS is committed to grade-level reading. The research clearly shows that students struggling to read at grade level in primary grades often fail in later academic settings. More recent research is also clear, however, that retention is not as effective as it once may have appeared. Bryan Jacob of the Brookings Institution summed up the recent research into retention eloquently, saying:

“...these studies ... do not find significant and lasting benefits. Several studies find that retention is associated with short-term improvements in standardized test scores, but these seem to fade within several years. And none of these “new generation” studies indicate any positive effects on high school completion.”

He goes on to say:

“Consider the case of Florida. While it is true that the state saw impressive initial gains in fourth-grade reading scores after adopting the policy in 2002, a rigorous analysis found that by the time kids who repeated third grade reached middle school, they were no better off than their peers who just missed being retained. Moreover, Florida invested nearly \$100 million per year in tutoring, summer school, and teacher professional development to support early reading at the same time it implemented mandatory retention. It is unclear whether a retention policy alone would have similarly positive effects.” (<https://www.brookings.edu/research/the-wisdom-of-mandatory-grade-retention>)



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RRPS agrees with NM PED that blanket social promotion policies that are devoid of comprehensive academic supports are harmful to students. However, RRPS also believes that blanket retention policies are equally harmful. We believe that Patrick McCarthy and Ralph Smith of the Annie E. Casey Foundation said it best: “the best available evidence suggests that retention alone is ineffective at improving student achievement, yet we know that social promotion alone is an unacceptable alternative. Most important, we know that intervention programs for third-graders who are at risk of being retained can substantially increase their academic achievement. This suggests that neither passive social promotion nor mandatory retention is a good policy strategy.” ([https://gradelevelreading.net/wp-content/uploads/2014/05/EarlyWarning\\_ForewordLetter\\_RalphPatrick\\_Final.pdf](https://gradelevelreading.net/wp-content/uploads/2014/05/EarlyWarning_ForewordLetter_RalphPatrick_Final.pdf))

RRPS believes that the most effective strategies focus on comprehensive intervention in all primary grades. RRPS argues that instead of rules that toughen an already clear retention law, support for comprehensive high-quality curriculum, materials, interventions, training in teaching foundational reading skills, and better aligned, Common Core Standards criterion-referenced assessments would be more effective tools to support districts in moving the needle to improve grade-level reading.

RRPS believes it is imperative that schools implement a three-tiered system of support for students learning to read at grade level. When properly implemented, the NM Literacy Framework can guide districts toward a focus on strong Tier 1 core instruction and on targeted intervention when students are not progressing at the same rate as their peers. Additional funding can provide districts with the necessary support to ensure that evidence-based and/or research-based resources are used to implement the NM RtI Framework. We feel that a strong focus on proactive response to student need will yield long-term benefits that mandatory retention does not.

RRPS is also concerned about the potentiality to have significantly over-age students in elementary school and beyond. As the proposed rule is written, a student may be retained once per grade K-3. Were this to happen, a student who entered Kindergarten at age 5 would be 14 prior to completing fifth grade (see table below). We believe such significant age disparities would create significant safety concerns for all students.

Table 1.

K	K Yr 2	Grade 1	Gr 1 Yr 2	Grade 2	Gr 2 Yr 2	Grade 3	Gr 3 Yr 2	Grade 4	Grade 5
5	6	7	8	9	10	11	12	13	14



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Ultimately, RRPS believes that decisions around student promotion/retention should be based on multiple measures and the result of concerted, partnership-driven decisions made between parents, teachers and school administrators, not singular test scores. RRPS respectfully requests that NM PED consider eliminating the blanket requirements for retention, and instead put forth a plan to increase access to quality instruction and supports.

**Concerns with mandatory acceleration programs.**

RRPS believes both in personalization and in the rigor of the CCSS. Students who are able to perform at a higher level than their peers should be provided the opportunity to delve deeper into the standards and to engage in applications to real-life situations. However, the CCSS have been very well articulated in a vertical manner. We are concerned about the potential impact on students' future performance if they are not provided the opportunity to achieve mastery of the foundational standards at each grade level. That said, there may be a few cases where full year or mid-year promotion is appropriate. The district already has processes in place to evaluate the appropriateness of this action based on multiple measures. All stakeholders also need to consider the impact on the student's social and emotional well-being, not just in the early grades but also when the student is in the secondary setting and is not legally able to engage in the same activities as his or her peers. Since this already occurs, there is not a need for additional rules and regulations.

RRPS believes in providing comprehensive opportunities that allow each child to grow and excel. However, mandating an additional, separate, online curriculum for acceleration without funding is untenable. RRPS is concerned that the unfunded nature of this requirement will lead to the use of inexpensive, untested programs that may negatively impact the students they are designed to support. Because of this, RRPS respectfully requests that NM PED consider turning such requirements into optional programming.

Sincerely,

A handwritten signature in black ink that reads 'V. Sue Cleveland'.

Dr. V. Sue Cleveland,  
Superintendent of Schools  
Rio Rancho Public Schools

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Charles Goodmacher, NEA-NM <cgoodmacher@neanm.org>

Tue 5/15/2018 2:04 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruszkowski and Members of the Public Education Department,

As an educator obligated by the Code of Ethical Responsibility of the Education Profession, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

Proposed rule 6.19.9 on literacy indicates a total lack of understanding of the statutes of the state and of the state's tradition of local control of public education. The rule conflicts with the law and it conflates several educational issues as though they just involve reading proficiency. Adopting the proposed Rule is wrong according to the law, and it is wrong for our students.

State statutes refer to a student's academic proficiency, not just their achievement on a reading benchmark test created by the PED. New Mexico 22-2C-6 states, "Local school boards shall approve school-district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who do not demonstrate academic proficiency." Reading proficiency will be measured by "by grades, performance on school district assessments and other measures identified by the school district."

The Rule wrongly proposes one high-stakes measure— and that PED created reading benchmark assessment does not even exist yet.

Nowhere in statute is the PED's newly minted accelerated options of whole grade or midyear promotions allowed in statute. A child's grade level placement must also consider developmental criteria other than just academic proficiency!

The PED's inclusion of Kindergarten in its ill-conceived rule has no statutory undergirding; no matter how far you stretch the law!

Please do not adopt this proposed rule.

Charles Goodmacher, NEA-NM  
cgoodmacher@neanm.org

3540 North Pole Loop NE  
Rio Rancho, New Mexico 87144

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Margaret Alire <info@actionnetwork.org>

Tue 5/15/2018 2:29 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruszkowski and Members of the Public Education Department,

As an educator obligated by the Code of Ethical Responsibility of the Education Profession, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

Proposed rule 6.19.9 on literacy indicates a total lack of understanding of the statutes of the state and of the state's tradition of local control of public education. The rule conflicts with the law and it conflates several educational issues as though they just involve reading proficiency. Adopting the proposed Rule is wrong according to the law, and it is wrong for our students.

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Please do not adopt this proposed rule.

Margaret Alire  
m\_alire@yahoo.com

1213 Godfrey St  
Española , New Mexico 87532

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Rosemary Carrasco <rosemary.carrasco@carlsbadschools.net>

Tue 5/15/2018 3:06 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruskowski and Members of the Public Education Department,

As an educator obligated by the Code of Ethical Responsibility of the Education Profession, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

Proposed rule 6.19.9 on literacy indicates a total lack of understanding of the statutes of the state and of the state's tradition of local control of public education. The rule conflicts with the law and it conflates several educational issues as though they just involve reading proficiency. Adopting the proposed Rule is wrong according to the law, and it is wrong for our students.

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The PED's inclusion of Kindergarten in its ill-conceived rule has no statutory undergirding; no matter how far you stretch the law!

Please do not adopt this proposed rule.

Rosemary Carrasco  
rosemary.carrasco@carlsbadschools.net

4818 Vaquero  
Carlsbad, New Mexico 88220

# NO to mandatory retention!

Cate Moses Studio <catemoses@gmail.com>

Tue 5/15/2018 3:16 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

**Mandatory retention based on high-stakes testing does more harm than good.** Years of research shows that holding kids back not only does nothing to improve their reading skills, instead it increases their likelihood of dropping out of school. Holding students back increases their risks of dropping out of high school – this has negative lifelong consequences for our children and for our community. New Mexico already has one of the worst dropout rates in the country. We need to help students stay in school, not push them out before they graduate.

Other states that have implemented mandatory retention based on high-stakes testing have reversed them after seeing them fail.

Holding students back especially hurts children of color and low income children – these are the kids who are facing the greatest educational barriers and are most likely to be held back and drop out of school.

**The PED should withdraw its proposal and instead implement educational programs proven to improve literacy rates for our children.**

The current retention policy already in place is good policy. It allows districts, teachers, and parents, the people who know a child best, to determine what must be done to help a child learn to read.

Cate Moses, Ph.D.  
Artist and Educator  
Santa Fe, NM  
[www.catemoses.com](http://www.catemoses.com)



Virus-free. [www.avg.com](http://www.avg.com)

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Stephanie Garcia Richard <stephanie.garciarichard@nmlegis.gov>

Tue 5/15/2018 3:24 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruskowski and Members of the Public Education Department,

Dear Secretary Ruskowski and public education department,

You have tried unsuccessfully for years to pass this flawed policy into legislation. It has failed because of its heavy reliance on a single, high stakes standardized measure, its lack of accompanying resources for early intervention and its failure to acknowledge the damaging impact of retention on the likelihood of a student's graduation. Please reconsider passing this shortsighted policy into rule and instead focus efforts and resources on your Striving Readers program which will prevent the need for such a punitive, failed policy to begin with by emphasizing early literacy.

Stephanie Garcia Richard  
stephanie.garciarichard@nmlegis.gov  
30 GLENVIEW COURT Street Address 2 Apartment or Suite Number  
White Rock , Texas 87547

## comments regarding the purposed rule

Church, Pamela <churchp@ruidososchools.org>

Tue 5/15/2018 4:07 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Our state always has budget issues. Has anyone considered the expense involved in implementing this rule?

My training taught me that there should be three data points in determining a child's performance. One point only provides a glimpse rather than a complete picture. For example, I have a student that is in Tier 2 in I-station. I just benchmarked him and he read with 99% accuracy. This student also has good comprehension skills. I-station does not provide that type of information.

Also, I agree with and teach the five components of reading as are indicated in the proposed "rule". However, not all children learn to read using phonics. Some learn by whole word or by sentence.

Instead of creating a rule that is flawed, why doesn't PED do something that would actually benefit our students? My solution is for the PED to provide funding for interventionists that are certified teachers and actually have a background in reading, as well as provide funding for alternative materials that can be used in place of the traditional curriculum that is not working for those students.

Thank you,  
Pamela Church, M.ED.  
Sierra Vista Primary  
Ruidoso Municipal Schools

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# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Rebecca DeLair <info@actionnetwork.org>

Tue 5/15/2018 4:47 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruskowski and Members of the Public Education Department,

As an educator obligated by the Code of Ethical Responsibility of the Education Profession, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

Proposed rule 6.19.9 on literacy indicates a total lack of understanding of the statutes of the state and of the state's tradition of local control of public education. The rule conflicts with the law and it conflates several educational issues as though they just involve reading proficiency. Adopting the proposed Rule is wrong according to the law, and it is wrong for our students.

State statutes refer to a student's academic proficiency, not just their achievement on a reading benchmark test created by the PED. New Mexico 22-2C-6 states, "Local school boards shall approve school-district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who do not demonstrate academic proficiency." Reading proficiency will be measured by "by grades, performance on school district assessments and other measures identified by the school district."

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The PED's inclusion of Kindergarten in its ill-conceived rule has no statutory undergirding; no matter how far you stretch the law!

Please do not adopt this proposed rule.

Rebecca DeLair  
bdeclair@gmail.com

PO Box 1325  
Abiquiu, New Mexico 87510

# Early Literacy Remediation Interventions and Parental Engagement

deb woodward <debsandwood@gmail.com>

Tue 5/15/2018 5:37 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

This opportunity to comment on NMPED's proposed rule concerning Early Literacy Remediation Interventions and Parental Engagement is necessary if students and families in New Mexico desire grade level reading proficiency. What parent would argue that they don't want their child to be able to read on grade level and comprehend rich text?

Unfortunately parents do not receive the necessary information about assessments and data that is available. Too often grade inflation is provided by teachers and principals to hinder honest discussion about reading skills. The parent teacher conference is interpreted as a mechanism to see students names published in the local hometown newspaper as an "Honor roll" student-through persuasion and not data. If there had been a Quality of Education survey conducted this year the first question posed could have been- Do you know how your child scored on the PARCC assessment? Not only do parents not know their child PARCC scores- the students do not know their scores either! Weak communication about academic progress must stop.The time has come to focus on student success and not fundraising or fluff.

If uninformed parents are the case in upper elementary grades-how are parents informed about their child's proficiency in grades K-3? Even the summer K-3 program does not adequately inform parents about academic progress. By putting the proposed rule in place, parents would see school as an academic building where challenging skills are taught and not as a part-time recreation center to plan popcorn and pickle sales. In theory, when a staff member from NMPED stops @ a school to review proposed intervention plans the districts will take their charge seriously.New Mexicans want strong academic & literacy skills taught effectively in the schools. Parents want to be involved in their children's education in a sincere and informed manner.

NMPED is moving in the right direction in delivering a strong meaningful Literacy rule that will inform parents of their child's progress.

I wholeheartedly support your efforts.

Sincerely,  
Deb Woodward

## Feedback: Early Literacy

Daniel Mannella <dmannella@bps.k12.nm.us>

Tue 5/15/2018 5:39 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

To whom it may concern, RE:

### **6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement**

I am an educator in this state and I am of the belief that mandated retention for students not meeting certain proficiency standards for reading by 3<sup>rd</sup> grade is an absolutely disastrous, shortsighted idea. Since all that seems to matter to people involved in education policy in this country is money, consider the financial ramifications. This would be incredibly expensive, and for the same amount, if not less, you could pay for interventions that actually work instead of retaining students, which has proven largely ineffective. Test scores don't define students. Don't make them harm students either.

Very sincerely,

Daniel Mannella

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Kellye Stimpson <kellye.stimpson@demingps.org>

Tue 5/15/2018 8:14 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruszkowski and Members of the Public Education Department,

As an educator obligated by the Code of Ethical Responsibility of the Education Profession, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

Proposed rule 6.19.9 on literacy indicates a total lack of understanding of the statutes of the state and of the state's tradition of local control of public education. The rule conflicts with the law and it conflates several educational issues as though they just involve reading proficiency. Adopting the proposed Rule is wrong according to the law, and it is wrong for our students.

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The PED's inclusion of Kindergarten in its ill-conceived rule has no statutory undergirding; no matter how far you stretch the law!

Please do not adopt this proposed rule.

Kellye Stimpson  
kellye.stimpson@demingps.org

2208 Lily Dr. NE  
Deming , New Mexico 88030

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Lourdes Huerta <lourdes.huerta@demingps.org>

Tue 5/15/2018 9:22 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruszkowski and Members of the Public Education Department,

As an educator obligated by the Code of Ethical Responsibility of the Education Profession, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

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Please do not adopt this proposed rule.

Lourdes Huerta  
lourdes.huerta@demingps.org

Po box 923  
Hurley, New Mexico 88043

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Diane Trujillo <info@actionnetwork.org>

Tue 5/15/2018 10:17 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruszkowski and Members of the Public Education Department,

As an educator obligated by the Code of Ethical Responsibility of the Education Profession, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

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Please do not adopt this proposed rule.

The PED has got to open their eyes! You are playing with people's lives in the classrooms you never visit. You have no idea what some of these children face on a daily basis, the issues we contend with in the schools, and the factors leading to failure for some of these kids. Let me be

one to say basing anything on these less than adequate standardized assessments is ridiculous. Can you please explain how the text to speech on a reading test is even a test of reading abilities? You are going to see more parents demand special education assessments for kids as a means to fight retention. We are already seeing teachers and administrators cheating on this flawed teacher evaluation system. Don't be blind to reality. Mandatory retention based on assessments created by Pearson is not for the child! Stop this ridiculous miss use of power!

Diane Trujillo  
abcread123@gmail.com  
1902 South 4th Street  
Tucumcari, New Mexico 88401

## early literacy

ROXANNE MITCHELL <roxanne.mitchell@clovis-schools.org>

Wed 5/16/2018 6:04 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

About 75% of my students enter 5th grade below grade level.

--

Roxanne Mitchell  
Sandia Elementary

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# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Diana Jackson <info@actionnetwork.org>

Wed 5/16/2018 6:21 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruszkowski and Members of the Public Education Department,

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Please do not adopt this proposed rule.

Diana Jackson  
dianajackson4472@gmail.com

2510 Harvard Ave  
Alamogordo , New Mexico 88310

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Carol Hatch <info@actionnetwork.org>

Wed 5/16/2018 7:33 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruszkowski and Members of the Public Education Department,

As an educator obligated by the Code of Ethical Responsibility of the Education Profession, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

Proposed rule 6.19.9 on literacy indicates a total lack of understanding of the statutes of the state and of the state's tradition of local control of public education. The rule conflicts with the law and it conflates several educational issues as though they just involve reading proficiency. Adopting the proposed Rule is wrong according to the law, and it is wrong for our students.

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Please do not adopt this proposed rule.

Carol Hatch  
sailorcjh@gmail.com

17335 Purple Sage Rd SW  
Deming, New Mexico 88030-1200

## rule feedback

Kimberly Moellenbeck <kmoellenbeck@bps.k12.nm.us>

Wed 5/16/2018 8:55 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

I am a kindergarten teacher at Cochiti Elementary in Pena Blanca. Although I appreciate the idea, I do not agree with the rule that Tier 2 students should be held back. Especially if they have shown significant and continuous growth.

Thank you

## Early Literacy Feedback

Rudi Thornburgh <rthornburgh@bps.k12.nm.us>

Wed 5/16/2018 9:04 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

I am strongly opposed to retention as a default outcome for students not meeting grade level targets for literacy.

This is not a research supported path and is inappropriate to address the concerns outlined.

Further, retention as a means to address lack of academic progress has been shown to reduce academic engagement due to or in addition to social stigma and diminished self-esteem.

Academic interventions are the most consistently research supported option for students not meeting targets.

I suggest that this be where we place our resources.

Sincerely,  
Rudi Thornburgh  
Special Education Teacher  
Cochiti School

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Maria Archuleta-Gabriele <info@actionnetwork.org>

Wed 5/16/2018 9:47 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruskowski and Members of the Public Education Department,

As an educator obligated by the Code of Ethical Responsibility of the Education Profession, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

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Please do not adopt this proposed rule.

Maria Archuleta-Gabriele  
maria.archuleta@gmail.com

1202 Ridgecrest Dr. SE  
Albuquerque, New Mexico 87108

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Meredith Machen <mermachen@cybermesa.com>

Wed 5/16/2018 10:55 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruszkowski and Members of the Public Education Department,

I write to object to the proposed rule as the founder of Literacy Volunteers of Santa Fe as well as an English teacher for 38 years. As Vice President of SFCC, I also supervised the teacher education program and the Early Childhood Development Center and allied programs. The PED should withdraw the proposed Reading Retention Rule 6.19.9 based on the scientific evidence of numerous studies that have shown that retention does more damage than good. Remediation through tutoring and supplemental instruction is far more effective than retention.

Proposed rule 6.19.9 on literacy indicates a total lack of understanding of the statutes of the state and of the state's tradition of local control of public education. The rule conflicts with the law and it conflates several educational issues as though they just involve reading proficiency. Adopting the proposed Rule is wrong according to the law, and it is wrong for our students.

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Nowhere in statute is the PED's newly minted accelerated options of whole grade or midyear promotions allowed in statute. A child's grade level placement must also consider developmental criteria other than just academic proficiency!

Thank you.

Dr. Meredith R. Machen,

Education Chair,  
League of Women Voters of New Mexico.

Meredith Machen  
mermachen@cybermesa.com  
613 Webber St.  
Santa Fe, New Mexico 87505

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Vivian Skadron <info@actionnetwork.org>

Wed 5/16/2018 11:28 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruszkowski and Members of the Public Education Department,

As an educator obligated by the Code of Ethical Responsibility of the Education Profession, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

Proposed rule 6.19.9 on literacy indicates a total lack of understanding of the statutes of the state and of the state's tradition of local control of public education. The rule conflicts with the law and it conflates several educational issues as though they just involve reading proficiency. Adopting the proposed Rule is wrong according to the law, and it is wrong for our students.

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Please do not adopt this proposed rule.

Vivian Skadron  
vskadron@gmail.com

12915 Joelle Rd NE  
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## Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Rebecca Shankland <info@actionnetwork.org>

Wed 5/16/2018 12:20 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruskowski and Members of the Public Education Department,

As a former teacher, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

The current practices are flexible and allow teachers and parents to make individual decisions for individual children. Generally, holding students back does more harm than good.

Please do not adopt this proposed rule.

Rebecca Shankland  
rebecca.shankland@gmail.com  
6 Mariposa Ct.  
White Rock, Texas 87547

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Elaine Jacobs <info@actionnetwork.org>

Wed 5/16/2018 2:10 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruskowski and Members of the Public Education Department,

As an educator obligated by the Code of Ethical Responsibility of the Education Profession, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

Proposed rule 6.19.9 on literacy indicates a total lack of understanding of the statutes of the state and of the state's tradition of local control of public education. The rule conflicts with the law and it conflates several educational issues as though they just involve reading proficiency. Adopting the proposed Rule is wrong according to the law, and it is wrong for our students.

State statutes refer to a student's academic proficiency, not just their achievement on a reading benchmark test created by the PED. New Mexico 22-2C-6 states, "Local school boards shall approve school-district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who do not demonstrate academic proficiency." Reading proficiency will be measured by "by grades, performance on school district assessments and other measures identified by the school district."

The Rule wrongly proposes one high-stakes measure— and that PED created reading benchmark assessment does not even exist yet.

Nowhere in statute is the PED's newly minted accelerated options of whole grade or midyear promotions allowed in statute. A child's grade level placement must also consider developmental criteria other than just academic proficiency!

The PED's inclusion of Kindergarten in its ill-conceived rule has no statutory undergirding; no matter how far you stretch the law!

Please do not adopt this proposed rule.

Elaine Jacobs  
perkijacobs@gmail.com

3007 Villa Street  
Los Alamos , New Mexico 87544

## Public Comments re Proposed Rule 6.19.9

Lauren Winkler <lauren@nmpovertylaw.org>

Wed 5/16/2018 3:32 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

 1 attachment

NMCLP Public Comments-Rule 6.19.9-2018-05-16.pdf;

Dear Ms. Gonzales,

Please find attached the New Mexico Center on Law & Poverty's public comments in response to PED's Proposed Rule 6.19.9.

Thank you,  
Lauren

Lauren A. Winkler  
Staff Attorney

New Mexico Center on Law & Poverty  
924 Park Ave. SW, Suite C  
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505-255-2840  
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May 16, 2018

New Mexico Public Education Department  
Attn: Jamie Gonzales  
Policy Division, Rm. 101  
300 Don Gaspar Avenue  
Santa Fe, NM 87501

Sent via email: [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us)

Dear Secretary-Designate Ruszkowski:

The New Mexico Center on Law & Poverty opposes PED's Proposed Rule 6.19.9 "Early Literacy Remediation, Interventions, and Parental Engagement." The proposed regulation exceeds PED's rulemaking authority and conflicts with current statutes regarding remediation and promotion. The state's current retention policy, which is clearly set forth in statute, is good policy. NMSA § 22-2C-6. It allows districts, teachers, and parents to determine what remediation a child needs to become proficient. NMSA § 22-2C-6 also allows districts to determine what is best for a child based on her individual needs as a student, not based on what she scores on a standardized test. PED's proposed rule violates this statute.

Not only is the proposed regulation illegal, it is bad policy. The proposed rule does not implement or support any programs that actually help students learn, like PreK, extended learning time (K-3 Plus, summer and afterschool programs, and tutoring), and professional development for teachers to teach reading. Instead, PED mandates a state reading assessment that K-3 graders must pass to be promoted.

It appears that PED is seeking to legislate through rule-making what it could not convince the Legislature to do after many years of unsuccessfully trying to pass third grade retention legislation. PED's proposed rule attempts to usurp the Legislature by implementing that policy by regulation.

### **I. PED's proposed regulation exceeds its statutory authority.**

The State Rules Act states that "[n]o rule is valid or enforceable if it conflicts with statute. A conflict between a rule and a statute is resolved in favor of the statute." NMSA § 14-4-5.7(A). The New Mexico Legislature has already determined the remediation process for students in grades 1-

12. See NMSA § 22-2C-6. PED's proposed regulation "Early Literacy Remediation, Interventions and Family Engagement" directly conflicts with current law.

**a. In conflict with current law, PED's proposed rule would require school districts to use a PED-designated benchmark assessment and a PED-determined cut score to define reading proficiency.**

Contrary to state law, PED's proposed rule grants itself the authority to designate which benchmark assessment (short-cycle assessment) school districts would be required to use to determine students' reading proficiency in grades K-3. 6.19.9.8(D). Further, PED would determine the cut scores for reading proficiency for all districts. 6.19.9.8(A) The results of the PED-designated assessment would determine whether a student would need early literacy intervention and would direct the use of daily intervention, remediation, or alternative programming. 6.19.9.8(C).

This is in direct conflict with the current statute, which states that all remediation, academic improvement programs, and promotion policies shall align with school-district-determined assessment results. NMSA § 22-2C-6(A). The statute defines "school district-determined assessment results" as the results obtained from student assessments developed or adopted by a local school board and conducted at an elementary or middle school level. *Id.* at § 22-2C-6(J)(2). Additionally, current statute gives school districts the authority to measure academic proficiency by grades, performance on school district assessments, and other measures identified by the school district. NMSA § 22-2C-6(F)(3)(b).

**b. Several provisions in PED's proposed rule are outside of the scope of NMSA § 22-2C-6 and are therefore invalid.**

PED's proposed rule applies to K-3 students. However, the remediation statute only applies to students in grades 1-12, and does not include Kindergarten. NMSA § 22-2C-6(B). Thus, PED cannot regulate remediation programs, intervention, or retention of Kindergarten students.

The proposed rule also allows for exemptions from retention for "good cause." However, NMSA § 22-2C-6 does not identify any exemptions from its retention policy outside of special education students. *Id.* at § 22-2C-6(I). Similarly, PED's proposed rule outlines acceleration options for students in grades K-3. The proposed regulation would require school districts to offer certain options to students who excel. However, NMSA § 22-2C-6 does not give PED authority to regulate promotion policies. Thus, these sections of the proposed rule are invalid.

**c. PED's definitions are in conflict with current statute.**

Finally, PED's proposed regulation offers definitions that conflict with what is already defined in statute, including "academic improvement plan" and "student assistance team". See § 22-2C-6(J). The statutory definitions of these terms should be identical in the proposed regulation.

**2. Rather than pursuing a failed policy that does not improve literacy proficiency, PED should implement evidence-based programs and services that have proven to improve literacy rates for New Mexico's students.**

While it is by now a well-known fact that most New Mexican students cannot read at grade level, mandatory retention based on a standardized test will not solve this crisis. Instead, the state should be providing all students with educational services and programs that work. Children who attend high-quality PreK programs are less likely to be retained, need special education services, and are more likely to graduate from high school. The LFC has found that New Mexico PreK has positive long-term impacts on reading test scores through the 8<sup>th</sup> grade. Currently, however, only about 4,000 four-year-olds (of 27,000) have access to full-day PreK in New Mexico.

Similarly, K-3 Plus and extended learning time, such as summer and afterschool programs, have a positive impact on student learning in the early grades. K-3 Plus is proven to increase academic achievement for students. In fact, the LFC has found that the achievement gap between low-income and non-low-income students is closed when children participate in both PreK and K-3 Plus. Still, the LFC estimates that 52,000 students do not have access to K-3 Plus.

In addition to programs that work, teachers need continuing and embedded professional development to learn how to teach reading to children. But school districts do not receive enough SEG funding to provide the professional training that teachers need. Rather than mandating high-stakes testing for our youngest children in school, the PED should invest in instructional coaches and other professional development opportunities.

PED's answer to the vast majority of New Mexico's students being non-proficient in reading is to implement a test to 5-8 year-olds to determine whether a student should be promoted. The solution to teaching young children to read does not lie in high-stakes testing. Research shows that retention policies based on high-stakes testing does not help students academically. Students who are retained are less likely to pursue postsecondary education and are more likely to drop out and have poorer employment outcomes in terms of earnings.

We know what investments we need to make in New Mexico to improve literacy and the lives of our children. It does not include an investment in testing. Instead, invest in early childhood education and extended learning; provide technical assistance and professional development to districts to ensure these programs are high-quality and effective. Even the pieces of PED's proposed regulation that do not violate law are not answers to helping children learn how to read. For these reasons, the New Mexico Center on Law & Poverty opposes the proposed rule in its entirety and urges PED to withdraw it from consideration.

Sincerely,



Lauren A. Winkler  
Staff Attorney  
New Mexico Center on Law & Poverty  
[lauren@nmpoertylaw.org](mailto:lauren@nmpoertylaw.org)



Gail Evans  
Legal Director  
New Mexico Center on Law & Poverty  
[gail@nmpoertylaw.org](mailto:gail@nmpoertylaw.org)

On behalf of the following:

Dual Language Education of New Mexico  
Hatch Valley Public Schools  
Julia Rosa Lopez-Emslie, Member of the HEAC  
Lake Arthur Municipal Schools  
Learning Alliance New Mexico  
Loretta C. Salazar, Coalition for the Majority  
Mary Jean H. Lopez, former educator  
Michelle Valverde  
Native American Budget & Policy Institute  
New Mexico Center on Law & Poverty  
New Mexico Voices for Children  
Santa Fe Public Schools

## Comments on 6.19.9 third grade retention

Jody Benson <echidnaejb@gmail.com>

Wed 5/16/2018 3:52 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>; Ruszkowski, Christopher, PED <C.Ruszkowski@state.nm.us>;

Grade retention for third graders who underperform on reading achievement tests is not only unhelpful, but expensive and ineffectual. This idea seems to be a holdover from the ideology of unconfirmed Sec. of Ed. Hanna Skandera that was based on her so-called Florida Miracle that “has been thoroughly discredited, grade retention has no support in the research that shows retention has no positive outcomes but many negative consequences for children and tax payers....”\*

Studies do show that if students get proper help and attention, they may be able to improve on low performance, given a little extra time. However, as for holding students back in third grade, the best evidence (e.g., “The Effects of Test-Based Retention on Student Outcomes over Time: Regression Discontinuity Evidence from Florida,” by Guido Schwerdt University of Konstanz in Munich, and Martin R. West of Harvard) shows the downsides of grade retention. At an estimated cost of \$10,000/student/year of retention, data show holding children back because of less-than-average reading skills is a very expensive way to get at the problem of early reading ability. A better, more effective, less expensive method is K-3 Plus, to extend either the day with an after school program, or better, the week with Saturday school. Of course, what the child most needs are parents who care about their education. This is beyond the scope of the schools, but not of the State government who could offer more assistance to specifically low-income or illiterate parents to help them have the time and ability to spend with their children.

\* <https://radicalsolarship.wordpress.com/2013/04/01/just-say-no-to-just-read-florida-south-carolina/>

Jody Benson, Los Alamos NM, School Board 2007 - 2011

## Proposed rule relating to Early Literacy

Rena Stone <Rena.Stone@mesavista.org>

Wed 5/16/2018 3:57 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

As educators, we have to ensure that we've used every possible resource to help our students' academic success. I think that students should not receive a letter of retention unless/until Tier 2 interventions have been used in the remediation process. I believe too many teachers are not really providing the supports necessary and are just allowing our students to fall through the cracks of the system and are merely writing down, or saying that they are implementing these RTI supports to that child. I guess what I'm saying is that we should have strict accountability rules before a child is retained. We must be sure that this is a child who got the very best of what we can give them in the way of literacy interventions. We need to make absolutely sure our teachers are, indeed, implementing those interventions.

I know that many people are opposed to this rule, citing developmental reasons, etc. However, the American educational system has been a certain way for a long time, and it's going to take more than a belief or a study to change that. The fact is, as teachers, we *all* know what's wrong with our educational system. We can only take baby steps to make the whole things the way we know it should be. In the meantime, we can stop ostracizing students who do need another year in a particular grade, or can't read as fluently as the other students. I think that making some tweaks in how the accountability is going to happen will help to assure parents that their children are not going to be left behind and suffer life-long trauma or depression because they spent an extra year in 5<sup>th</sup> grade.

Thank you for allowing us this opportunity to speak.

Respectfully,

Mrs. Rena Stone  
Mesa Vista Middle/High School  
ELA

*"Do not train children to learning by force and harshness, but direct them to it by what amuses their minds, so that you may be better able to discover with accuracy the peculiar bent of the genius of each."*

*~Plato*

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## Public comment on proposed rule 6.19.9

Charles Bowyer <[cbowyer@neanm.org](mailto:cbowyer@neanm.org)>

Wed 5/16/2018 4:02 PM

To:FeedBack, Rule, PED <[Rule.FeedBack@state.nm.us](mailto:Rule.FeedBack@state.nm.us)>;

 2 attachments

Proposed rule 6.19.9 NEA-NM.pdf; ATT00001.txt;

## NEA-New Mexico Testimony on Proposed rule 6.19.9

The New Mexico Public Education Department (PED) is once again demonstrating its top-down approach to education issues in the state. Proposed rule 6.19.9 on literacy indicates a total lack of understanding of the statutes of the state and of the state's tradition of local control of public education. The rule conflates several issues as though they just involve reading proficiency.

State statutes refer to a student's academic proficiency, not just their achievement on a reading benchmark test created by the PED. New Mexico 22-2C-6 states, "Local school boards shall approve school-district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who do not demonstrate academic proficiency." According to the statute this proficiency will be measured by "by grades, performance on school district assessments and other measures identified by the school district." The PED once again insists on one high-stakes measure—the PED's yet to be created reading benchmark assessment.

The rule also overreaches on other aspects of grade promotion defined in statute. According to New Mexico law, when a child completes grades 1 through eight, one of four options are available. The child is academically proficient and enters the next higher grade; the child is not academically proficient and participates in remediation; the child is not academically proficient and is retained; or the child is promoted if the parent refused to have the child retained.

Nowhere in statute is the PED's newly minted accelerated options of whole grade or midyear promotions allowed in statute. A child's grade level placement must also consider developmental criteria other than just academic proficiency!

And, of course, the PED's inclusion of Kindergarten in its ill-conceived rule has no statutory undergirding, no matter how far you stretch the law!

And as far as the instructional efficacy of retaining students, there is massive research literature indicating that retained students achieve at lower levels, are more likely to drop out of high school, and have worse social-emotional outcomes than similar students who are promoted. Studies show that these policies disproportionately affect students of color, students living in poverty, English language learners (ELL), and students with special needs, as these subgroups experience significantly lower passing rates on state assessments

See the attached for NEA Background Research on third-grade retention.

## BACKGROUND: THIRD-GRADE RETENTION

### The Challenge

Each state must adopt a set of challenging standards and make decisions on both the tests and the proficiency levels that indicate successful attainment of the standards. Policies requiring the retention of third-grade students if they do not score at or above the proficient level on high-stakes standardized tests are becoming more commonplace. At best, this test score provides a single data point in a child's learning and does not take into account gains that have been made during the year, merely if a student falls below or above this score. States are concerned that students' inability to pass a reading proficiency test at the end of third grade will hamper the students' ability to progress through school and meet grade-level expectations. There is evidence to support these concerns (Hernandez, 2012); however, there are other factors to be considered when making broad decisions about retention policies.

Many states have adopted *mandatory third-grade retention* laws to hold back students who do not score proficiently on third-grade state examinations. Although these policies are aimed primarily at reading, some states have broader social promotion policies that consider performance on other content area assessments in

determining retention (The Foundation for Excellence in Education, n.d.). The 2015 National Assessment of Educational Progress (NAEP) data show that 64 percent of fourth graders scored below the proficient level in reading and 60 percent scored below the proficient level in mathematics indicating that retention policies have the potential to affect a majority of students (The Nation's Report Card, n.d.).

These policies disproportionately affect students of color, students living in poverty, English language learners (ELL), and students with special needs as these sub-groups experience significantly lower passing rates on state assessments (Huddleston, 2014; Katsiyannis, Zhang, Ryan & Jones, 2007; Xia & Kirby, 2009). Retention has both short- and long-term negative effects. The short-term effects of retention have the potential to stigmatize students as less capable or less intelligent, and these types of stigma can scar their educational careers (Andrew, 2014). Additionally, there is ample research indicating that retention has a negative impact on long-term academic performance and is the single largest predictor of dropping out (Rumberger, 1995; Smith, 2004; Smith & Shepard, 1987).

In their analysis of the effects of Florida test-based retention, Schwerdt and West (2013) report that there is "no definitive evidence that test-based retention in early grades is beneficial for students in the long run, even when it is accompanied by the requirement that students receive additional services" (p.24). A comprehensive review of test-based retention policies confirms that these policies disproportionately affect ethnic minority and impoverished students and reveals that any short-term gains associated with retention do not hold over time with retained students having an increased likelihood of dropping out (Huddleston, 2014). A 2014 study concluded that retention of elementary students is particularly damaging on their educational trajectories and that

students retained between kindergarten and fifth grade are 60 percent less likely to graduate high school than students with similar backgrounds (Andrew, 2014).

With the potential for such large numbers of students to be affected by these policies, it is important to consider the capital costs of retention. In a cost benefit analysis of retention, Eide and Goldhaber (2005) evaluate the cost of retention across various states and grade levels, considering the per pupil cost of retention, associated interventions, cost of delayed entry into the workforce, and future earnings benefits of “successful retention” as measured by potential increase in test scores. In their analysis, the combined costs of retention overshadowed any potential earnings benefits of “successful retention.”

Third grade has long been considered a critical juncture in student learning. Chall’s (2003) developmental theory of reading designates fourth grade as the time when students shift from learning to read to reading to learn. There is new evidence that this *fourth grade shift* extends beyond fourth grade and into adolescence (Coch, 2015). These findings indicate that reading skills and abilities develop at different times for different students and that what is needed are appropriate supports along individual learning trajectories.

### The Opportunity

School systems can ill afford the human and financial burdens of retaining large numbers of students. Alternatives to retention provide an opportunity to allay both the human and capital costs associated with retention practices. Studies on these alternatives agree that failure prevention through a system of learning supports can help lessen poor performance and—ultimately—reliance on retention. According to Darling-Hammond (1998), holding a child back to repeat the same experience does not ensure that the experience will be more appropriate or of higher quality the second time around.

A comprehensive system of learning supports provides the physical, cognitive, social and emotional support that every student needs to succeed in school and in life. These supports extend beyond the classroom and include resources, practices, and environmental factors within the school and community (Center for Mental

Health in Schools, 2008). Several characteristics of classrooms, communities, and schools should be considered in a retention prevention system. As districts and schools move to embrace a prevention model, multiple studies indicate that there are program elements and characteristics that can increase opportunities for student success. Research supports the program elements and strategies discussed here as effective components of retention prevention models.

**School readiness.** According to the National Association for the Education of Young Children (2009), school readiness is a measure of how prepared a child is to succeed in school cognitively, socially, and emotionally. School readiness, as measured by school-entry academic and attention skills, is a significant predictor of later reading and math achievement (Duncan et al., 2007). Socioeconomic status—which is closely related with race/ethnicity—is also strong predictor of low school readiness skills (Lee & Burkam, 2002; Sadowski, 2006). In addition, there are significant racial and socioeconomic disparities in access to high-quality early education (U.S. Department of Education, 2015). According to Fiester (2013), preschool attendance is one of the strongest success factors that influence school readiness for students from low-income families. Several studies bolster Fiester’s claim and provide additional information on how access to high-quality preschool can benefit children, especially those from low-income families. These benefits include:

- Intensive early childhood intervention helps ameliorate income-based achievement gaps (Duncan & Sojourner, 2012).
- Early development of working memory and attention control skills are predictive of kindergarten reading and math achievement (Welsh, Nix, Blair, Bierman, & Nelson, 2010).
- Early environments and relationship experiences affect the capacity for self-regulation skills development (Center on the Developing Child at Harvard University, 2011).

**Full-day kindergarten.** To support the continuum of school readiness, students should have access to high-quality, full-day kindergarten programs. Full-day kindergarten programs can have a significant impact on student learning and ongoing academic success. Research shows that it can help close achievement gaps by providing added opportunities for students to receive more academically focused and meaningful instruction

(National Center for Education Statistics, 2004; Parker, Dife, & Atchison, 2016). As compared to students enrolled in half-day programs, benefits of full-day kindergarten include:

- Full-day kindergarten students are less likely to be retained in early grades (Center for Public Education, 2011).
- Full-day kindergarten students make greater gains in reading language arts and mathematics over the course of the kindergarten year (National Center for Education Statistics, 2004).
- Full-day kindergarten students have more individualized instructional time with teachers, allowing them to identify and address early learning challenges (National Center for Education Statistics, 2004).

### Classroom characteristics.

**Individualized instruction.** Studies show that tailored instruction and targeted interventions based on diagnostic assessments can help accelerate student learning. These tailored interventions should engage and intellectually stimulate students and include culturally and developmentally appropriate strategies to address students' individual learning needs (Jimerson, Pletcher & Kerr, 2005; Johnson & Rudolph, 2001; Lynch, 2014; Protheroe, 2007). To keep struggling students engaged, teachers can offer alternative routes to success such as revising assignments to allow for mastery while maintaining high expectations of student work (Krier, n.d.; Johnson & Rudolph, 2001; Lynch, 2014; Protheroe, 2007). A key component to success is that teachers provide timely and substantive feedback to students (Protheroe, 2007).

**Accelerated learning.** For students who are falling behind, remediation alone will not work. Students must have learning opportunities that will allow them to catch-up with their grade level peers while minimizing time out of the classroom. There is evidence that sustained relationships between student and teacher can help accelerate learning by lessening the time that it takes teachers to understand the learning needs and styles of their students, so providing supplemental learning time with teachers with whom students have worked before can have better outcomes (Darling-Hammond, 1998; Krier, n.d.). Interventions and supplemental learning opportunities should be available routinely and carefully tailored

to target deficits and build on strengths of each student (Darling-Hammond, 2002; Jimerson, Pletcher, Kerr, 2005; Lynch, 2014). Extended learning time, flexibility in school scheduling, extended class time, and the use of transitional classes or multiage classrooms are a few ways to support accelerated student learning (Darling-Hammond, 1998; Krier, n.d.; Johnson & Rudolph, 2001; Lynch, 2014; Protheroe, 2007).

### Community characteristics.

**Parental support.** To address the needs of struggling students, support should extend beyond the classroom walls. Teachers, counselors, administrators, and other appropriate school personnel should have frequent contact with parents/guardians to collaborate with them, engage and advise them, and work with them to effectively support their child's learning. These should not be one way conversations, but ways to help them feel connected to the school and strategically plan involvement in their child's education, giving them a voice in what happens to their children in the school environment. This is especially important for students with diverse cultural/language backgrounds (Jimerson, Pletcher & Kerr, 2005; Krier, n.d.; Lynch, 2014).

**Community support.** Schools should seek ways to involve community stakeholders as an additional means to support struggling students through school-family-community partnerships. These partnerships can include a broad range of individuals/groups including parents, guardians, stepparents, grandparents, foster parents, other relatives and caregivers, businesses, agencies, cultural and civic organizations, colleges or universities, and other community groups. The work within these partnerships should focus on goal-oriented activities specifically linked to student achievement and school success (Henderson & Mapp, 2002; Jimerson, Pletcher & Kerr, 2005; Krier, n.d.; Lynch, 2014).

### School characteristics.

**Early identification and use of systematic diagnostic assessments.** Early warning systems that alert educators to potential problems early in the educational process are essential to failure prevention. Systematic identification procedures that include diagnostic assessments should be employed for every student at the beginning of every year and at regular intervals during the year. This diag-

nostic information should be studied by school teams and serve as the basis for student learning plans and interventions (Jimerson, Pletcher & Kerr, 2005; Protheroe, 2007). Additionally, student work, teacher observations, and classroom assessments used to inform teaching and learning are equally important to aid in understanding how students think and learn and allow educators to offer supports that tie to work students are doing as part of normal routine (Darling-Hammond, 1998; Lynch, 2014). The continuous monitoring of progress should be used to modify and individualize instruction (Johnson & Rudolph, 2001; Krier, n.d.).

**Professional Development.** High-quality professional development is a vital link to improvements in teaching and learning (Johnson & Rudolph, 2001). With diverse student populations, teachers must be able to respond to a wide range of student needs. In addition to deep understanding of content, standards and curriculum, teachers must also understand the wide range of students' approaches to learning and possess a diverse range of strategies and pedagogical skills to ensure that they reach all students (Darling-Hammond, 1998; Johnson & Rudolph, 2001; Lynch, 2014). Teachers need access to high-quality professional development to help them attain and maintain these skills as well as the time to implement, refine, and assess them.

**Other learning supports.** Noncognitive factors also affect student academic performance (Farrington et al., 2012). An abundance of research indicates that social and emotional learning (SEL) programs improve academic achievement along the continuum of learning (Weissberg, Goren, Domitrovich, & Dusenbury, 2013). SEL programs address skills/competencies that can affect academic behavior and long-term academic success (Zins, Weissberg, Wang, & Walberg, 2004; Belfield, Bowden, Klapp, Levin, Shand, & Zander, 2015). Schools that employ policies, practices, and structures related to positive school climate are better equipped to support SEL as these support multi-tiered systems of support that address academic, behavioral, and social success factors (Durlak, 2015, Jimerson, Pletcher & Kerr, 2005). These types of supports address different dimensions of student learning and are important supplements to academic interventions aimed at preventing student failure.

## Conclusion

Retention policies have the potential to affect a majority of students, and they disproportionately affect students of color, students living in poverty, English language learners and students with special needs. School readiness, early identification, and appropriate learning supports offered along the educational continuum can help lessen the impetus for punitive retention policies.

### NEA Opposes:

- The use of standardized tests for mandated determination of a student's future.

### NEA Supports:

- Ongoing evaluation of student learning based on multiple measures, including authentic assessments, that are directly linked to the standards, curricula, and the materials teachers use
- Programs to facilitate and enhance school readiness.
- The establishment of nonmandatory "universal" pre-kindergarten for all three- and four-year-old children
- Full-day—as opposed to half-day—kindergarten and prekindergarten
- Programs that meet the needs of students along the educational continuum and enhance student performance in all curricular areas
- A "whole child" approach to learning, teaching, and community engagement that encourages parental and community involvement in all aspects of a child's education; addresses multiple dimensions such as students' physical, social, and emotional health and well-being; ensures equity, adequacy, and sustainability in resources and quality among public schools and districts
- Increased availability and access to extended learning opportunities such as before- and after-school programs, academic enrichment, mentoring, tutoring, and programs that extend the school year or school day for students in need of such services.
- Positive involvement of parents, guardians, or designated caregivers in the schools and programs to provide incentives for appropriate parental and community involvement in schools
- Opportunities for staff development and in-service training for all education employees and initiatives to support the development of cultural competence among all educators.

## Resources

**Full-day Kindergarten: A Missing Link in the Prekindergarten through Third Grade (P-3) Continuum for Many Students** provides background information on the benefits of full-day kindergarten. [http://www.nea.org/assets/docs/18781\\_Full-Day\\_Kindergarten\\_Backgrounder-Final.pdf](http://www.nea.org/assets/docs/18781_Full-Day_Kindergarten_Backgrounder-Final.pdf)

**Full-day Kindergarten Helps Close the Achievement Gaps** is an NEA policy brief that outlines the importance of providing young children with a full day of kindergarten to maintain the progress achieved in early childhood programs. [http://www.nea.org/assets/docs/18001\\_Full-Day\\_Kindergarten\\_Policy\\_Brief-final.pdf](http://www.nea.org/assets/docs/18001_Full-Day_Kindergarten_Policy_Brief-final.pdf)

**Parent, Family, Community Involvement in Education** is an NEA policy brief that outlines the importance of family and community involvement as a factor in student success and ways in which families and communities can become active in the education process. [http://www.nea.org/assets/docs/PB11\\_ParentInvolvement08.pdf](http://www.nea.org/assets/docs/PB11_ParentInvolvement08.pdf)

**The Authentic Assessment Toolbox** is an NEA resource to help K-12 teachers create authentic tasks, rubrics, and standards for measuring and improving student learning. <http://www.nea.org/tools/lessons/57730.htm>

**Great Public Schools (GPS) Indicators Framework** is designed to give policymakers, educators, and advocates a framework to evaluate how well states, districts, and schools address areas critical to student success. Criteria addressed in the framework include: 1) School Readiness; 2) Standards and Curriculum; 3) Conditions of Teaching and Learning; 4) Workforce Quality; 5) Accountability and Assessments; 6) Family and Community Engagement; and 7) School Funding. <http://www.nea.org/gpsindicators>

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## AFT New Mexico Written Feedback re: NMAC 6.19.9

John Dyrzcz <john@nmaft.org>

Wed 5/16/2018 4:39 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Cc:Stephanie Ly (AFTNM) <stephanie@nmaft.org>; Kathy Chavez <katc8601@gmail.com>; Bernstein, Ellen <ellen@atfunion.org>;

 1 attachment

AFT NM Comments NMAC 6.19.9.pdf;

Ms. Gonzales:

Please find attached a PDF of written comments regarding the New Mexico PED's proposed rule changes, *Early Literacy Remediation, Interventions, and Parental Engagement, NMAC 6.19.9*, submitted on behalf of the 23,000 public educators represented by the American Federation of Teachers New Mexico.

If you have any questions or concerns, please do not hesitate to contact.

Best,  
John Dyrzcz  
AFT NM

--

John Dyrzcz || State Affiliate Political Organizer, AFT-NM  
505-554-8679 || 530 Jefferson Street NE, Albuquerque, New Mexico 87108

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May 16, 2018

Jamie Gonzales, Policy Division  
New Mexico Public Education Department, Room 101  
300 Don Gaspar Avenue,  
Santa Fe, New Mexico 87501

Re: *“Early Literacy Remediation, Interventions, and Parental Engagement”*

Ms. Gonzales:

Please accept the below comments on the proposed new administrative Rule 6.19.9 NMAC, *“Early Literacy Remediation, Interventions, and Parental Engagement”*:

AFT New Mexico is deeply concerned with proposed NMAC Rule 6.19.9, as it constitutes an overreach of Departmental authority in the creation and implementation of remediation efforts in our public schools, as well as the diminishment of the Legislative process and local control of assessments at the district level.

AFT New Mexico has consistently been a vocal opponent of this proposed policy and others like it during past legislative sessions. Our position regarding the educational validity and potential harmful effects on our students is well known both by the NM PED and members of the Legislature; however, we are motivated to offer comments on this proposed rule for the additional reasons outlined below.

### **Rulemaking Overreach**

As currently written, the proposed Rule 6.19.9 attempts to implement remediation and retention mandates outside of the scope granted by statute.

Specifically, 6.19.9 attempts to test and remediate students enrolled in kindergarten programs, however, because kindergarten isn't mentioned in the Assessment and Accountability Act, we believe this is outside the scope of Departmental authority.

Additionally, the rule, as proposed, removes the ability for a public school district to make retention decisions based on locally-identified multiple measures instead of a series of PED-imposed tests. We agree with many other concerned stakeholders on this issue; the PED doesn't have the authority to remove “good cause” exemptions from remediation decisions. Mandating a series of additional tests also contradicts the PED's public statements around efforts to reduce testing time and state-mandated tests.

Finally, definitional terms in proposed Rule 6.19.9 conflict with existing statute, and it is our understanding, as provided for by the State Rules Act, that existing statutory language overrides the PED's attempts to re-define certain terms, such as “academic improvement plan” and “student assistance team,” as they relate to this proposed rule, which, if implemented as written, will cause unnecessary confusion at the school level.

## Usurping Local Control

Another area of intended consequence of proposed Rule 6.19.9 is the diminishment of local control over areas of remediation, testing, and intervention.

It is clear that Rule 6.19.9 attempts to implement PED-approved benchmark tests (and presumably cut scores) as the sole mechanism of determining whether or not a student advances to a subsequent grade level. Such efforts have been rejected at the legislative level for several years.

We agree with other stakeholders, notably the Legislative Education Study Committee, that the PED does not hold the authority to establish statewide benchmark assessments unilaterally, or force districts to administer additional PED tests in this area. The right to establish such benchmark assessments and standards of proficiency is clearly given to local districts, and New Mexico statute specifically states remediation considerations must be made through multiple measures, including, "grades, performance on school district assessments, and other measures identified by the school district."

Ultimately, we believe the current statutory guidelines for remediation and intervention issues are best addressed at a local level, which allows educators, parents, and students to make informed decisions about the student's academic journey.

Furthermore, we reject the belief that because PED-supported legislative efforts around remediation and interventions have been unsuccessful over seven years that administrative rulemaking is an appropriate end-run around New Mexico's Legislature.

We would be more supportive of these efforts if the PED had actually proposed programs to help our youngest students learn, such as additional funding for PreK, funding for extended learning times, investment in community schools, and school-based remediation programs. Instead, the PED is essentially proposing multiple additional tests for our youngest learners, which contradicts all meaningful research and practice around this issue.

We sincerely hope you will take these serious concerns into consideration as you begin to reflect on the feedback you are receiving from stakeholders on these proposed changes. It is our firm belief the NM PED has the ability and obligation to respond in a meaningful way to this feedback and relent from this proposed course of action.

Finally, on behalf of thousands of New Mexico's public educators, we are again disappointed that proposed changes to NM PED rules continue to be scheduled during the workday and during the school year. We believe this scheduling practice disenfranchises educators who are not only the experts in the field, but who are directly impacted by these proposed decisions. We urge future hearings be scheduled when education professionals are readily able to attend.

Sincerely,

Stephanie Ly  
President, AFT NM

Kathy Chavez  
Executive Vice President, AFT NM

Ryan Ross  
K-12 Vice President, AFT NM

Ellen Bernstein  
President, Albuquerque Teachers Federation

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Billie Helean <info@actionnetwork.org>

Wed 5/16/2018 6:23 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruszkowski and Members of the Public Education Department,

As an educator obligated by the Code of Ethical Responsibility of the Education Profession, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

Proposed rule 6.19.9 on literacy indicates a total lack of understanding of the statutes of the state and of the state's tradition of local control of public education. The rule conflicts with the law and it conflates several educational issues as though they just involve reading proficiency. Adopting the proposed Rule is wrong according to the law, and it is wrong for our students.

State statutes refer to a student's academic proficiency, not just their achievement on a reading benchmark test created by the PED. New Mexico 22-2C-6 states, "Local school boards shall approve school-district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who do not demonstrate academic proficiency." Reading proficiency will be measured by "by grades, performance on school district assessments and other measures identified by the school district."

The Rule wrongly proposes one high-stakes measure— and that PED created reading benchmark assessment does not even exist yet.

Nowhere in statute is the PED's newly minted accelerated options of whole grade or midyear promotions allowed in statute. A child's grade level placement must also consider developmental criteria other than just academic proficiency!

The PED's inclusion of Kindergarten in its ill-conceived rule has no statutory undergirding; no matter how far you stretch the law!

Please do not adopt this proposed rule.

Billie Helean  
bhelean@gmail.com

616 Sunny Meadows Dr. NE  
Rio Rancho, New Mexico 87144

# Input on the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

Katherine Jaramillo <info@actionnetwork.org>

Wed 5/16/2018 6:45 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Christopher Ruszkowski and Members of the Public Education Department,

As an educator obligated by the Code of Ethical Responsibility of the Education Profession, I write to urge the PED to reject the proposed Reading Retention Rule 6.19.9.

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The PED's inclusion of Kindergarten in its ill-conceived rule has no statutory undergirding; no matter how far you stretch the law!

Please do not adopt this proposed rule.

Katherine Jaramillo  
Kmbjara@gmail.com

P. O. Box 662  
Hurley, New Mexico 88043

## Comments on Rule Change from NMAEYC

Baji Rankin <baji@nmaeyc.org>

Wed 5/16/2018 8:11 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Cc:Kathy De Soto Strickland <Kstrickland1957@aol.com>;

 2 attachments

Comments from NMAEYC to PED proposed regs-2018-05-16.pdf; ATT00001.htm;

Hello,

I am submitting comments from Kathy DeSoto Strickland, VP for Public Policy and President Elect of the New Mexico Association for the Education of Young Children, in opposition to the proposed rule changes regarding reading proficiency for K-3 graders. Please see attached document.

THANK YOU.

Baji Rankin



New Mexico Association for the  
Education of Young Children

2201 Buena Vista SE, Suite 301  
Albuquerque, NM 87106  
(505) 243-5437 (phone) (505) 242-7310 (fax)

May 16, 2018

New Mexico Public Education Department  
Attn: Jamie Gonzales  
Policy Division, Rm. 101  
300 Don Gaspar Avenue  
Santa Fe, NM 87501

Sent via email: [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us)

Dear Secretary-Designate Ruszkowski:

The New Mexico Association for the Education for Young Children (NMAEYC) does not support current attempts to implement more assessment in classroom instruction targeting intervention and retention of children k-3<sup>rd</sup> grade. Currently, there are assessments in place mandated by the state in grades k-3 that perform the functions of the above-mentioned subjects. Furthermore, the legislature did not approve the retention of 3<sup>rd</sup> grade students on more than one occasion. Studies have shown retention does not necessarily improve student learning and out-comes. In a 2005 study Hong states, "Retention policies have significant negative effects on retained students and little or no significant effects on their promoted peers. Estimates suggest that promoted students would show lower growth if they had been retained, whereas retained students would experience higher growth if promoted" (Hong, p.222, 2005). Promotion at this level should take into consideration the developmental readiness of the student and not just the use of retention as a behaviorist motivation mechanism.

Recommendations include: The most effective means of improving student achievement is to focus funding on instructional coaches and interventionists in schools. Supporting our educators through meaningful professional development opportunities and helping them develop exemplary classroom practices. A foundational belief in early childhood (birth to third grade is early childhood) is

the premise that families are a child's first and most important educator. With this in mind funding should be allocated allowing schools to focus on providing family activities and creating a sense of inclusiveness that promotes learning as a joint venture. These are the most effective means within public education of avoiding retention. Additional assessment will only add to the current trend of over assessing, which diminishes student and teacher agency within the educational process.

In addition, recognizing the importance of and supporting high quality early learning programs BEFORE public schools are also effective strategies for improving student achievement. NMAEYC is interested in working with PED on identifying and supporting the most effective strategies.

Kathy DeSoto-Strickland, Ph.D  
NMAEYC Vice President of Public Policy and  
NMAEYC President-Elect  
[kstrickland1957@aol.com](mailto:kstrickland1957@aol.com)

Hong, G., & Raudenbush, S. (2005). Effects of kindergarten retention policy on children's cognitive growth in reading and mathematics. *Educational Evaluation and Policy Analysis* 27(3), 205–224

## Comment: Objection to PED Proposed Retention Policy

Linda McDowell <twylajayne@icloud.com>

Wed 5/16/2018 8:15 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

I strongly object to PED's proposed retention of third graders who are achieving below grade level.

I taught public school Special Education for 22 years in CA and NM. Research has proven retention does not work. Skilled teachers use a full range of strategies to support student success and rarely recommend retention.

When third graders who are already frustrated by reading challenges face the stigma of retention, many will simply give up.

Frequently, negative comments and bullying related to retention cause life-long damage to self esteem.

There are many research-based strategies PED should implement to improve academic success:

1. Provide birth to five high quality preschool which includes home visits and parent training.
2. Provide monies for continuos teacher training in current best practices.
3. Provide incentives to highly qualified teachers willing to transfer to low performing schools.
4. Provide monies for multiple reading programs enabling teachers to accommodate students varied learning styles and strengths.
5. Provide classroom libraries with fiction and non fiction books at many reading levels (100 books, magazines reference materials in every classroom)
6. Increase the number of classroom computers and research-based reading programs.

TALK TO KIDS LISTEN TO TEACHERS.

They have many great ideas to improve

education and foster student success.

Linda C. McDowell  
6320 Michelangelo Ln NW  
Albuquerque, NM 87114  
(505-974-1942)

from my iPhone

## 6.19.9 NMAC Proposal

Jace Ensor <tonkadude@hotmail.com>

Thu 5/17/2018 7:41 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Greetings: My wife is a teacher with 20+ years tenure. Teacher retention is your greatest problem and it's no wonder when you're piling more and more responsibilities on the teachers. Also you're piling more and more students in her classrooms.

If you want poorly parented kids to learn how to read, they need more attention from their teachers. This cannot happen with 25 students in FIRST GRADE. Do away with the classroom size waivers and you'll be amazed how the reading abilities of students will improve. Teachers might also stick around.

Jace Ensor Ruidoso, New Mexico 575.808.1232

## 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement

Kara Lanctot <karalanc@gmail.com>

Thu 5/17/2018 7:59 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Public comment from:

Kara Lanctot  
4604 8th St. NW  
ABQ NM 87107

From working with parents I understand that some school districts do not consider a child's eligibility for Special Education until the 3rd grade. By that time the child has already been labeled and whether we like to admit it, or not, has been tracked. The child's future is determined by 3rd grade before an evaluation for disabilities has been done. Often there is poor instruction and in smaller school district who have just one teacher per grade if the child is retained the child spends another year with the same teacher. If reading proficiency is not achieved by a certain age it is not the child's fault and retaining the child is not a solution. Student's with disabilities need support and services. If further early intervention is being encouraged then that needs to be coupled with a full evaluation.

## Rule 6.19.9 proposal

Ensor, Becky <ensorj@ruidososchools.org>

Thu 5/17/2018 11:01 AM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Greetings and I'm sorry I cannot attend in person.

The proposed rule 6.19.9 is a knee jerk reaction to the problem of students mastering reading skills. Very few of my students have both parents at home and their parents are having to deal with realities of LIFE happening. Oh how I wish that reading made the priority list at home. With that being a near impossibility consider that these precious angels are starved for attention. I CANNOT GIVE 25 students what they need in a few hours 5 days a week. Let's do the math: Students arrive 8:00 and leave at 3:00. That's 7 hours or 420 minutes divide by 25 = 16.8 minutes per day per student. Oops, I left out all of the pull-outs and lunch. If I could have 3 minutes per day per student I'd be ecstatic. I'm asking for 75 minutes to focus on each student. Reality is I have less than 15 minutes or 900 seconds divided by 25 = 36 seconds of attention I can give each student per day.

Do away with the classroom size waivers and you'll be amazed what happens with the reading skills.

Respectfully submitted. Jan Ensor Master teacher for 23 years.

This message originates from the Ruidoso Municipal School District. This email and any files transmitted with it are confidential and intended solely for the use of the individual(s) or entity to whom they are addressed. If you have received this email in error please notify the system manager at [admin@ruidososchools.org](mailto:admin@ruidososchools.org) or via phone at 575-257-4051. If you are not the named addressee you should not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

## 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement

Bruce Turnquist <turnquistbd@gmail.com>

Thu 5/17/2018 12:49 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

To all concerned:

The objective is worthy. Aspects of the proposed new rule regarding both informing and involving parents are critically important. This said, I have concerns about the benchmark assessment itself. It is prescribed to measure student performance on five components of early reading: phonemic awareness, phonics, fluency, vocabulary, and reading comprehension. All of these are important. I suggest that three of these components (and perhaps a fourth, depending upon your definition of fluency) may be measured by surface tools, such as multiple choice responses (or timed reading of passages in the case of fluency). Such measures are insufficient with comprehension. Further, such measures tell a teacher very little about the process the child goes through as that child puts together these five components in order to learn to read. Yet, it is stated under 6.19.9.8 that the benchmark assessment results "shall direct the use of daily intervention, remediation, or alternative programming." Are we teaching to the test here, or actually teaching children to read?

A single mode of measure for a high stakes action, such as retention, is contraindicated. Additionally, retention under this rule is to be based upon reading performance alone. A student may be highly successful with another subject, such as mathematics, yet would be retained. Is not the reading difficulty itself what should be addressed?

Thank you for consideration of my thoughts on this matter.

Sincerely,

Bruce Turnquist  
Retired teacher, elementary level, and grandparent

2708 Vereda Rodiando  
Santa Fe, NM 87505

## Early Literacy Comments

Francine Torivio <administration@puebloofacoma.org>

Thu 5/17/2018 12:57 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Cc:mjohnson@puebloofacoma.org <mjohnson@puebloofacoma.org>; Archumbeau, Guy <drGuya@msn.com>; Holder, Stanley <sholder@puebloofacoma.org>; mpatricio@puebloofacoma.org <mpatricio@puebloofacoma.org>; Lorissa Garcia <lg.acoma@hotmail.com>; '1st Lt' <1st\_lt@puebloofacoma.org>; Calabaza, DeAlva, PED <DeAlva.Calabaza@state.nm.us>; Riley, Kurt <governor@puebloofacoma.org>; 'conroy chino' <conroychino@comcast.net>;

 1 attachment

POA comments.PDF;

Good Afternoon,

Attached are comments from the Pueblo of Acoma Governor's Office is regards to the Public Hearing on "Early Literacy Remediation Interventions and Family Engagement." We thank you in advance for considering our letter. If you have any questions, please contact Raymond J. Concho, Jr., 1<sup>st</sup> Lt. Governor at (505) 552-6604 or via email at [1<sup>st</sup> Lt@puebloofacoma.org](mailto:1st_lt@puebloofacoma.org). Thank you.

*Francine Torivio, Administrative Assistant  
Pueblo of Acoma Governor's Office  
P.O. Box 309  
Pueblo of Acoma, NM 87034  
Office: (505) 552-5141  
Fax: (505) 552-7204*

*Kurt Riley, Governor*  
*Raymond J. Concho, Jr., 1st Lt. Governor*  
*Bernard E. Lewis, 2nd Lt. Governor*  
*Davy D. Malie, Tribal Secretary*  
*Elliott Sanchez, Jr., Tribal Interpreter*



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*Fax: (505)552-7204*

**PUEBLO OF ACOMA**  
OFFICE OF THE GOVERNOR

May 17, 2018

Jamie Gonzales, Policy Division  
New Mexico Public Education Department  
Room 101  
300 Don Gaspar Avenue  
Santa Fe, NM 87501

Sent via email: [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us) (Due 5:00 pm May 17, 2018)

Dear Secretary-Designate Ruskowski:

The Pueblo of Acoma has reviewed the proposed rule 6.19.9 “**Early Literacy Remediation, Interventions, and Family Engagement.**” The Pueblo of Acoma was unaware of any recent 2018 legislation calling for this change. We are now concerned that this rule does not have a legislative mandate and conflicts with existing law and rule.

**Current Guidelines**

With respect to framework and process, current state law and guidelines assist students in need.

1. Public school districts already have the mechanisms, remediation programs, interventions, improvement plans, promotion retention policies, and district determined assessments.
2. Schools are to monitor student progress. When students are not performing satisfactorily, a team will be organized, and with involvement of parents produce a plan to intervene.
3. With continuous monitoring, reporting, and consulting with parents, team recommendation for retention may be one consideration.
4. However, parents may sign a waiver indicating their desire for their child to be promoted the next higher grade. An academic improvement plan will be implemented and monitored. If the student fails to become academic proficient he/she will face retention.

The points being made state the obvious. The NMPED already has law, rules, and guidelines in place that schools and parents can initiate once a child is showing academic failure.

The new rule 16.6.09, focuses on reading only, ignoring other key areas of learning. In contrast, the current statute and rules could include more than reading, such as math proficiency.

### **Early Reading Assessment in Grants Cibola County School**

The Pueblo of Acoma has monitored the progress of its students for several years. The 2018 performances of Native American students at Grants Cibola County Schools performed at the following levels on the I-Station and PARCC:

Grants Cibola	Districtwide	K	American Indian	140	48%	I-station
Grants Cibola	Districtwide	1	American Indian	132	50%	I-station
Grants Cibola	Districtwide	2	American Indian	122	61%	I-station
Grants Cibola	Districtwide	3	American Indian	132	13%	PARCC

The percent of American Indian students who were proficient varied. Forty-eight percent of native kindergartners were proficient in reading, 50% of native first graders were proficient, and 61% of native second graders were proficient. In grade three, the PARCC results show that only 13% of the native students were proficient in ELA.

If the new rule is implemented, then there would be a sizable percent of the Native American students in grades K-3 (which includes Acoma students) who could be in jeopardy of being retained, if the sole indicator was a measure of reading proficiency such as the I-station.

### **The Aftermath of Retention**

We are very concerned with the aftermath of students who are retained. It places the stigma right upon the student and can trigger further academic and socio-emotional problems in subsequent years beyond the year of retention.

### **More than Reading as a Measure of Academic Proficiency**

The Pueblo of Acoma stresses that successful students should be measured by more than reading. We believe that a student should be able to not only comprehend literature and informational text, but to demonstrate academic proficiency in other areas of learning.

- We must include measures that require the critical reasoning found in mathematics.
- They must become knowledgeable of the human condition found in social studies.
- Knowledge of our physical and natural world should be measured. We have a sacred responsibility to Mother Earth. Students should appreciate and be informed on how American and Native sciences can both preserve all life and nature.

- The fine arts, physical education, etc. are considered to be essential in creating a well-rounded student and therefore deserving of attention when we are making judgements of a student.

### **Testing Technology – A Barrier?**

Ever since the state has dropped paper and pencil testing and demanded computerized and web-based testing it eliminated more effective, student friendly forms of assessment. Testing technology helps the accountability system, it does no favor for our students. It distorts our understanding of what assessment is. Lost is the greater value of authentic assessment found in observable performance, portfolios, etc. Also, several schools do not access to high-speed internet broadband.

### **Cultural and Linguistic Heritage**

And finally, we especially emphasize our cultural and linguistic heritage. Without our traditional legacy, inherited from our ancestors and elders, Native people are diminished. There has to be a place in our systems of education progress measurement to accommodate those valuable elements of native identity.

### **Position of the Pueblo of Acoma**

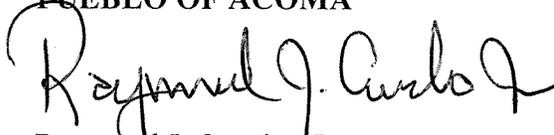
Accordingly, the Pueblo of Acoma takes the following positions.

- The Pueblo of Acoma rejects the proposed rule due to its narrow definition of academic proficiency and the absence of any credible research that supports this emphasis on retention. We are very distrustful of a system that forces the student to bear the stigma of retention/failure solely on reading performance, when it, in fact, is the system that should bear that burden, from the Governor on down to the classroom.
- The Pueblo of Acoma recommends continuing and improving the current system of progress monitoring and student assistance, as set forth in current law and rules.
- The Pueblo of Acoma demands that New Mexico substantially increase state funding for both program and staffing. In nearly all national indicators on education and child care, New Mexico ranks at or near the bottom. We as citizens, legislators, and the educational bureaucracy ought to be ashamed.
- Programs that supplement or enrich academic performance are needed. Educators must be compensated at a greater level in recognition of the high value that the community places on them. If we don't, then English Learners, students with disabilities, and economically disadvantaged children will continue to be deprived of what they deserve.
- The Pueblo of Acoma urges school districts to develop a richer view of what academic proficiency is, as decisions on progress, promotion, and retention are considered. The inclusion of math, the content areas, etc. are suggested.

- The Pueblo of Acoma is sensitive to the needs of Native English Learners and students with disabilities. Federal and state law and rules need to be adhered to avoid any inappropriate retention of these students.
- The Pueblo of Acoma recommends that the Public Education Department work with Districts and schools to incorporate more culturally and linguistic responsive education. Through that approach to curriculum and instruction, our Acoma students will build their self-esteem and tribal identity as they also learn the importance of being an American. They will be more motivated to succeed academically when content is tied to their background.
- The Pueblo of Acoma calls for more effective strategies to educate, involve, and collaborate with parents in the early years. The younger generation of parents and the grandparents, who are forced to become parents again, desperately need help with themselves and their children.
- The Pueblo of Acoma reminds the PED Secretary to understand and comply with the NM Indian Education Act, consistently conduct tribal consultation with NM Indian tribes collectively and individually, meet with the NM Indian Education Advisory Council and elevate discussions with the PED Indian Education Division.
- The Pueblo of Acoma is prepared to work with the state of New Mexico, Grants Cibola County School District, local schools, tribal agencies and other agencies to enhance the home environment, to improve curriculum, to strengthen instruction and enhance a cultural and linguistic environment for our native students.

Sincerely,

**PUEBLO OF ACOMA**



Raymond J. Concho, Jr.  
1<sup>st</sup> Lieutenant Governor

cc: Governor Kurt Riley, Pueblo of Acoma  
Lorissa Garcia, President, Acoma Board of Education  
Stan Holder, Executive Director, Acoma Department of Education  
ATO File

## 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement

Sandra Simons <sjsimonstoo@gmail.com>

Thu 5/17/2018 1:09 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

 1 attachment

simons-aillesfeedback.docx;

#this testimony is appended as a Word file in addition to being in the body of this email#

May 16, 2018

Jamie Gonzales  
Policy Division  
NM Public Education Department

This feedback is in opposition to the proposed new rule 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

To establish my expertise, I am Dr. Sandra Simons-Ailes, with a Ph.D. in Educational Linguistics. I have 40 years of classroom experience in New Mexico, ten years with the Pueblo of Acoma in early childhood and literacy programs, and 30 years in Albuquerque Public Schools, with 3 years as a Title I teacher, and 27 years in elementary grades 1st through 4th. I hold New Mexico licensure, with endorsements as a reading teacher, teacher of English as a Second Language, and a technology coordinator. Additionally, I have a New Mexico ES-7 contractor's license in telecommunications and from 1996 through 2001 installed state of the art campuswide networks with faculty and parent volunteers in 104 schools statewide. This volunteer effort on my part served public schools, parochial schools and charter schools across the state. I also taught master-level coursework for the College of Santa Fe at Albuquerque for twenty years as adjunct faculty, teaching 5 to 6 courses a year. These courses included TESOL methodology, Introduction to Linguistics, Language Development, Literacy for Second Language Learners, Technology Integration, and Statistics for education masters students.

While I have many objections based on literacy research to the proposed regulation, my most critical concern is that the proposed retention of students not reading at grade level will in effect institutionalize racism. In the Legislative Education Study Committee analysis of HB41aa for the 2015 Regular Legislative Session, page 8 includes a table presenting data that shows the impact of the proposed retention policy on groups by gender, by ethnic/cultural background, by economic status, and English Language proficiency. I urge you to access the table to verify my summary of

the potential impact. To support my observation that such retention will institutionalize discrimination based on race and economic status, the data clearly demonstrates:

- 52% of African American third graders would face the retention option;
- 52% of Hispanic third graders would face the retention option;
- 68% of Native American third graders would face the retention option;

in contrast, only 33% White and 24% Asian students would face the retention option.

Furthermore, 55% of economically disadvantaged and 61% of English Language Learners would face the retention option. These categories no doubt correlate with the race/ethnicity data more than we would hope.

Retention as noted in the LESC report referenced above impacts poor, minority male urban students heavily. It lowers self-esteem and increases drop out rates.

The proposed regulation keeps referring to AIPs for students with below grade level literacy performance and calls for increased time for remedial instruction. Anyone who has spent years as a classroom teacher will agree that it is extremely difficult to provide the 90 minutes a day of remedial literacy instruction (what Florida deemed necessary and funded at 700 million dollars to little impact), as there is inadequate funding for extra staff, inadequate training for classroom teachers, and most significantly no time if classroom teachers are to meet the grade level standards for all students across curriculum subjects.

The regulation is punitive for economically disadvantaged students, limited English proficiency (LEP) students, and students of color. Early childhood education massively funded for 3 and 4 year olds would be a good investment for New Mexico to address the limited English proficiency and dearth of conceptual knowledge typical of the students "slated" for retention in the proposed regulation. Most likely, after 6 years of intensive early childhood program participation across New Mexico, the number of kids needing funding for remedial literacy instruction at the end of third grade would be greatly reduced, and thereby fundable.

More than twenty years ago the US Justice Department Office of Civil Rights arrived in New Mexico to address the statistical anomalies by race of Special Education enrollees. Having successfully sued or threatened to sue the "big states" of California and Texas, the legal settlements noted that limited English proficiency (LEP), which is highly correlated with ethnicity, was being addressed by shuttling students into Special Education. New Mexico saw the "handwriting on the wall", or quickly recognized the inherent institutional racism resulting from classroom teachers unable to make progress with minority students and referring them for Special Education testing, in which, of course, the students performed poorly. Many NM Districts increased funding for TESOL certified classroom teachers and there was massive training for all teachers in how to meet the needs of LEP students.

One would hope that already facing legal action that documents inadequate funding for Hispanic and other students of color, New Mexico would not rush into any educational policy that would insitutionally discriminate against students of color, LEP and economically disadvantaged students. Certainly, there are those of us who devoted 40 years of our professional careers in New Mexico classrooms who would work to ensure the Office of Civil Rights was aware of this policy mistake, and help fund local civil rights lawyers to put an end to such an egregious policy.

I urge you not to make a mistake and enact this policy.

Sandra Simons-Ailes, Ph.D.  
10 Gringo Gulch Rd  
Placitas, NM 87043  
[sjsimonstoo@gmail.com](mailto:sjsimonstoo@gmail.com)

## Automatic retention of 3rd graders

Andrew Delorey <andrew.a.delorey@gmail.com>

Thu 5/17/2018 1:25 PM

To:Ruszkowski, Christopher, PED <C.Ruszkowski@state.nm.us>; FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Dear Christopher Ruszkowski,

I am writing to oppose the automatic retention of 3rd graders who are not proficient in reading. I put my faith in educators and parents who know the affected students and can evaluate the best path forward, rather than a one-size-fits-all approach. The goal is to get the student proficient in reading and sometimes holding the student back will be the right choice and sometimes it won't. I think that in many cases, holding the student back could be detrimental to the student's academic progress.

Sincerely,  
Andrew Delorey  
Los Alamos  
505-310-6935



RECEIVED

MAY 17 2018

500 Laser Road NE  
Rio Rancho, NM 87124  
P. 505.896.0667  
F. 505.896.0662

Secretary of Education

May 4, 2018

Christopher N. Ruskowski  
Secretary  
NM Public Education Department  
300 Don Gaspar Avenue  
Santa Fe, NM 87501

Secretary Ruskowski:

Rio Rancho Public Schools (RRPS) is committed to rigorous standards, guaranteed and viable curricula, and the use of data to improve instruction. However, we have some concerns about the proposed Literacy Promotion Practices rule (NMAC 6.19.9). These concerns are related to two central issues contained in the proposed rule: retention and acceleration.

**Concerns with blanket determinations of retention.**

RRPS is committed to grade-level reading. The research clearly shows that students struggling to read at grade level in primary grades often fail in later academic settings. More recent research is also clear, however, that retention is not as effective as it once may have appeared. Bryan Jacob of the Brookings Institution summed up the recent research into retention eloquently, saying:

“...these studies ... do not find significant and lasting benefits. Several studies find that retention is associated with short-term improvements in standardized test scores, but these seem to fade within several years. And none of these “new generation” studies indicate any positive effects on high school completion.”

He goes on to say:

“Consider the case of Florida. While it is true that the state saw impressive initial gains in fourth-grade reading scores after adopting the policy in 2002, a rigorous analysis found that by the time kids who repeated third grade reached middle school, they were no better off than their peers who just missed being retained. Moreover, Florida invested nearly \$100 million per year in tutoring, summer school, and teacher professional development to support early reading at the same time it implemented mandatory retention. It is unclear whether a retention policy alone would have similarly positive effects.” (<https://www.brookings.edu/research/the-wisdom-of-mandatory-grade-retention>)

RRPS agrees with NM PED that blanket social promotion policies that are devoid of comprehensive academic supports are harmful to students. However, RRPS also believes that blanket retention policies are equally harmful. We believe that Patrick McCarthy and Ralph Smith of the Annie E. Casey Foundation said it best: “the best available evidence suggests that retention alone is ineffective at improving student achievement, yet we know that social promotion alone is an unacceptable alternative. Most important, we know that intervention programs for third-graders who are at risk of being retained can substantially increase their academic achievement. This suggests that neither passive social promotion nor mandatory retention is a good policy strategy.” ([https://gradelevelreading.net/wp-content/uploads/2014/05/EarlyWarning\\_ForewordLetter\\_RalphPatrick\\_Final.pdf](https://gradelevelreading.net/wp-content/uploads/2014/05/EarlyWarning_ForewordLetter_RalphPatrick_Final.pdf))

RRPS believes that the most effective strategies focus on comprehensive intervention in all primary grades. RRPS argues that instead of rules that toughen an already clear retention law, support for comprehensive high-quality curriculum, materials, interventions, training in teaching foundational reading skills, and better aligned, Common Core Standards criterion-referenced assessments would be more effective tools to support districts in moving the needle to improve grade-level reading.

RRPS believes it is imperative that schools implement a three-tiered system of support for students learning to read at grade level. When properly implemented, the NM Literacy Framework can guide districts toward a focus on strong Tier 1 core instruction and on targeted intervention when students are not progressing at the same rate as their peers. Additional funding can provide districts with the necessary support to ensure that evidence-based and/or research-based resources are used to implement the NM RtI Framework. We feel that a strong focus on proactive response to student need will yield long-term benefits that mandatory retention does not.

RRPS is also concerned about the potentiality to have significantly over-age students in elementary school and beyond. As the proposed rule is written, a student may be retained once per grade K-3. Were this to happen, a student who entered Kindergarten at age 5 would be 14 prior to completing fifth grade (see table below). We believe such significant age disparities would create significant safety concerns for all students.

Table 1.

K	K Yr 2	Grade 1	Gr 1 Yr 2	Grade 2	Gr 2 Yr 2	Grade 3	Gr 3 Yr 2	Grade 4	Grade 5
5	6	7	8	9	10	11	12	13	14

Ultimately, RRPS believes that decisions around student promotion/retention should be based on multiple measures and the result of concerted, partnership-driven decisions made between parents, teachers and school administrators, not singular test scores. RRPS respectfully requests that NM PED consider eliminating the blanket requirements for retention, and instead put forth a plan to increase access to quality instruction and supports.

**Concerns with mandatory acceleration programs.**

RRPS believes both in personalization and in the rigor of the CCSS. Students who are able to perform at a higher level than their peers should be provided the opportunity to delve deeper into the standards and to engage in applications to real-life situations. However, the CCSS have been very well articulated in a vertical manner. We are concerned about the potential impact on students' future performance if they are not provided the opportunity to achieve mastery of the foundational standards at each grade level. That said, there may be a few cases where full year or mid-year promotion is appropriate. The district already has processes in place to evaluate the appropriateness of this action based on multiple measures. All stakeholders also need to consider the impact on the student's social and emotional well-being, not just in the early grades but also when the student is in the secondary setting and is not legally able to engage in the same activities as his or her peers. Since this already occurs, there is not a need for additional rules and regulations.

RRPS believes in providing comprehensive opportunities that allow each child to grow and excel. However, mandating an additional, separate, online curriculum for acceleration without funding is untenable. RRPS is concerned that the unfunded nature of this requirement will lead to the use of inexpensive, untested programs that may negatively impact the students they are designed to support. Because of this, RRPS respectfully requests that NM PED consider turning such requirements into optional programming.

Sincerely,



Dr. V. Sue Cleveland,  
Superintendent of Schools  
Rio Rancho Public Schools



500 Laser Road NE  
Rio Rancho, NM 87124

Christopher N. Ruszkowski  
NM Public Education Department  
300 Don Gaspar Avenue  
Santa Fe, NM 87501

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## Proposed rule 6.19.9 nmac

glamaramas@yahoo.com

Thu 5/17/2018 1:59 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

I am adamantly opposed to this proposed rule.

1. This is no more than an attempt to shift responsibility for teaching children to read onto their parents and off of the schools. We pay our taxes and send our children to school to learn the fundamentals of reading, writing, math and sciences. Not simply to then be merely "notif[ie]d"... of all available options to improve student progress...". That is your job!!

2. More testing isn't going to improve reading.

3. Tasking teachers with more paperwork to collect "data" only takes away valuable teaching time better spent actually teaching children to read— imagine that!!

3. Shifting the burden onto parents to remediate their child's lack of literacy assumes all parents have the skills and resources to adequately address any deficits. What about the parent who is illiterate? What about the parent who is non-English speaking? What about the parent who works nights? Etc., etc.

4. Where's the funding for the additional personnel who are comprising these "student assistance teams"? Surely, this proposed rule doesn't assume these "teams" will be made up of the classroom teacher— or does it? As if keeping the teacher out of the classroom to attend more meetings will magically improve reading skills?!

5. Where is the funding and personnel who will administer the "Acceleration Options"?

This proposed rule does NOTHING to improve reading and literacy because it doesn't adequately address the many, varied underlying issues affecting students' reading-ability. How about better, earlier screening for learning disabilities? More individualized classroom instructors? Recognition that early literacy progresses at wildly different rates per individual?

Holding back or "retention" are fancy grown-up words to hide behind when any kids knows s/he "flunked" third grade. This rule is not the answer to improving New Mexican kids' education.

# Literacy Rule Feedback

Amanda Aragon <amanda.aragon@nmkidscan.org>

Thu 5/17/2018 2:59 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

 1 attachment

Literacy Rule - Letter of Support - SIGNED.pdf;

Good Afternoon -

Please find a letter in support of the proposed literacy rule attached. If you have any questions, please feel free to contact me.

[NewMexicoKids](#)

**Amanda Aragon**  
Executive Director

C: [505.980.4436](tel:505.980.4436)  
[P.O. Box 27217](#)  
[Albuquerque, NM 87115](#)  
[@AmandaRAragon](#)

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Sent with [Mixmax](#)



amanda.aragon@nmkidscan.org  
nmkidscan.org

Amanda Aragon  
Executive Director

May 17, 2018

New Mexico Public Education Department  
300 Don Gaspar  
Santa Fe, NM 87501

RE: 19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement

To Whom It May Concern,

Please accept this letter as evidence of support from NewMexicoKidsCAN for the proposed 19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement rule.

At present, according to the PARCC assessment fewer than one in three New Mexico students can read on grade level. As elected officials, administrators and teachers continue to work tirelessly to improve academic achievement for all students, the need for increased engagement from parents and families is essential. It is in fact that recognition - that families must be actively engaged in the education of their students - that leads NewMexicoKidsCAN to support this rule.

In particular, there are several components of the proposed rule that will allow for improved parent engagement, including:

- Required clear communication related to student progress to parents or legal guardians through parent notification letters
- Proposed data collection at the March, June and August milestones
- Written notification and required parent teacher conference after the middle-of-year assessment, if a student is not on grade level
- One time option for parents to choose their student not be retained
- Acceleration options for high-performing students

Parents have the right to know how their child is performing academically, understand how their child's current performance impacts their future and make informed decisions about their child's education. Let's not leave parents in the dark.

Sincerely,

Amanda R Aragon  
Executive Director

# Please Shred the Early Literacy Rule

Emily Severance <eseverance@bps.k12.nm.us>

Thu 5/17/2018 3:06 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Reading over the rule I find the increase of paperwork and sat meetings problematic, but I find the retention part of the rule particularly alarming. The studies I've read show the best way to have students catch up is by providing extra services rather than through retention. I'm not sure the state has thought through the cost of this, but retaining students will dramatically increase the cost of a child's overall education. If the state put the same amount of money towards interventions (after school programs, summer programs, more staff during the school year) there would probably be a better academic outcome without the social stigma and emotional toll that retention often seems to take.

Here's what one year of retaining non-proficient students at my school would add to their overall education. A U.S. Census Bureau report using data from 2014-15 had New Mexico's annual spending per student as \$9,752. According to the end of year IStation test for my school we have the following numbers of students not deemed proficient.

Kindergarten: 9

1<sup>st</sup> grade: 9

2<sup>nd</sup> grade: 12

3<sup>rd</sup> grade: 16

Total: 46 students x \$9,752/child=\$448,592

Our school could do a lot with half a million dollars. Instead of making children repeat a grade we could hire more reading interventionists and classroom teachers to have smaller classes--which would allow more time per student for differentiated and individualized instruction. We could have an after school program again—we used to have one, but our school improved enough that the funds were taken away and given to a poorer performing school. We could get educational assistants. We could adopt the literacy textbooks we were supposed to adopt two years ago but the district ran out of money.

Or is the state planning not to fund this initiative with new funds but to have districts cut more from their budgets? Is the plan to cut more reading interventionists, put off textbook adoptions even longer, and increase class sizes so that we can have students repeat a grade with less help and reusing worn out materials?

If the parent can only waive one year, does that mean a child who is behind in kindergarten and stays behind in 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> will have to repeat 3 years? So we'll have 12 years olds in the same class as 9 year olds?

What happens to the children who struggle with reading but excel in math?

These are just a few of the problems with mandating retention. It's a poorly thought out rule that should be trashed.

## Feedback for proposed rule

Songtree Pioche <rodeomomsongtree@gmail.com>

Thu 5/17/2018 4:23 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

May 17, 2018

Christopher Ruszkowski  
Secretary-Designate  
NM PED  
300 Don Gaspar  
Santa Fe, NM 87501

Sec. Ruszkowski,

Good afternoon, my name is Songtree Pioche. My children and I live in Bloomfield and represent the tribes of Taos Pueblo, Oglala Lakota, and Navajo. My children are in 1<sup>st</sup> grade, 6<sup>th</sup> grade, and 10<sup>th</sup> grade in Bloomfield and Aztec. I have three types of learners in my household. Developmental Delay, gifted, and regular ed.

I respectfully would like to offer a parent perspective on the proposed new rule regarding 6.19.9.8 General requirements for intervention, notification, and reporting.

**I support the rule on requirements for intervention, notification and reporting.** As a member of the community for over 8 years, I interact with parents on a regular basis in the bleachers, in the break room at work, at the community pool, online and have found that some have already chosen to retain their child based on their own observations. This is an emotional decision. Currently, at Central Primary the only way you can look at grades is on powerschool. My child has and IEP and has had low grades all semester and when I ask why the response is, powerschool is not aligned with K-3. If you go to my districts school website, there are no email addresses listed. Phone numbers are given out however teachers are working during the day and cannot take calls. I think this rule shows that intervention, notification, and reporting is needed but it also needs to take into consideration the barriers parents face when trying to support their children. I also believe parents needs advocates that are positive and will help them to prepare to enter SAT meetings and know what questions to ask and how to follow up.

**Regarding 6.19.9.9 Parent or legal guardian notification and engagement.**

The media has made New Mexicans aware that PARCC as the standardized assessment for 4-12<sup>th</sup> grade. Until I became a part of the family cabinet I didn't know what the names of the benchmark assessments were for K-3, where and when to expect results of these tests and how to use them for my child's benefit. The PED has done well in informing me that istation is the tool used for K-3. However, my district lacks in providing clear communication to our parents. I am still receiving crumpled up notes in the backpack days, weeks or at the end of the school year. Regular two-way communication on school websites, teacher webpages, social media, facebook lives, and TV commercials should be advertising the amazing resources like the NM Parent guide. Although we have some amazing dedicated educators at Central Primary in Bloomfield, we have been a F school

for many years and there are many barriers for a parent to voice concerns. There is no support from the school superintendent, federal programs, JOM committee, and a revolving door for the school principal. In my observation the work is left up to the teacher. If you don't have a good teacher, it can become a tense relationship. There is also no transportation for kids that do take advantage of afterschool tutoring and a limited number of cultural books that Native students can identify with and get excited about.

**I support parent or legal guardian notification and engagement and believe school leaders should be accountable to family engagement. It is written into laws such as the Indian Education Act and in Bloomfield native parents that are not on the Indian Education Committee can only attend meetings held during the day and listen, not comment. This is in the new bylaws.** . I do not believe teachers can raise the bar of education in school grades, assessments, and their own evaluations by themselves. Having access to assessments without having to wait on the district to mail them out months into the next school year will not help a parent keep their children on track. I support the 30-day requirement and encourage communication in many ways, in different languages, and sooner if readily available so that parents can strategize summer enrichment opportunities.

### **Regarding 6.19.9.11 Acceleration Options**

**I support acceleration options for grades K-3 for both gifted and special needs students.** I have the experience in being able to attest that because there is a lack of SPED teachers or gifted endorsed teachers that the Bloomfield district has slowed efforts in identification of gifted students. I can recall a conversation with my sons 3<sup>rd</sup> grade teacher Mrs. Edwards at Central Primary. At that time, he had some behavior issues that were beginning to surface and I thought, could he possibly have ADD or another type of disorder? It was two years later that a long-term substitute Mr. Miller suggested my son could possibly be gifted if he wasn't focused on being a class distraction. A year of advocating, consulting mentors and researching giftedness, he tested gifted in math and creativity. I recommend with this rule that:

- Teachers and educational assistants receive professional development on giftedness factors and acceleration options.
- Subs and new teachers learn about these same factors and options in PLC's and be able to offer resources to parents at family night or parent teacher conferences.

Cash has an IEP in place now that he is in 6<sup>th</sup> grade at Koogler Middle School in Aztec, however I still have to advocate for acceleration and awareness of the social and emotional needs of gifted learners to his teachers.

Acceleration options could also help retained students. If SAT teams can target deficiencies in academic improvement plans and support families, a retained student could accomplish midyear promotion.

Thank you for the opportunity to provide input on this important rule. It could change the trajectory for the great state of New Mexico.

Tah ah and Pilamiya (Thank you in Tiwa and Lakota),

Songtree Pioche  
Parent -505-215-3406  
Central Primary PAC  
Ambassador-Family Cabinet

~You are capable of 20x more than you think~ Mark Devine

## Feedback rule: 6.19.9

Mist Oracion <Mioracion@parentsreachingout.org>

Thu 5/17/2018 4:44 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

### **Feedback on the proposed new rule: 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.**

Dear Public Education Department,

Parents Reaching Out, New Mexico's OSEP-designated Parent Training and Information Center, would like to offer our feedback on the proposed new rule: 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement. We appreciate your continued support of having all of New Mexico children reading proficiently by third grade and promoting parent engagement!

We strongly support student reading proficiency communicated to parents or legal guardians through parent notification letters and parent-teacher conferences when a child is not reading at grade level. Although the law already requires this notification, we speak with a large number of parents across the state who do not receive this information and do not know what their child's current grade level is in reading. We believe all parents want the best for their children and want their children to succeed. We strongly support schools giving parents or legal guardians strategies to implement at home to increase their student's reading levels. Studies show that when families are engaged and work as a team with the school, students succeed. Parents deserve to know what grade level their child is in reading, and the notification should use parent-friendly language instead of educational language.

Parents Reaching Out also suggests including in the written notification to the parent (6.19.9.9, C. (1)) the option to evaluate a child for special education services, and a parent-friendly explanation of the Tier process. To illustrate the importance of why this needs to be included in the notification: a family with whom we worked had a child who had been given Tier II interventions in Kindergarten, and the school recommended the student for retention. Parents signed a waiver not to retain. In first grade, the school continued Tier II interventions, with no progress. The child was at grade level for math. The parent requested a Special Education evaluation and the school told the parent they could not evaluate until the third grade. We supported the parent in educating the school of their responsibility to evaluate the child and not wait until third grade. The child qualified for services under the category of SLD (Specific Learning Disability) and has made tremendous progress with the Tier III interventions that were appropriately put into place. If Tier II interventions have been implemented with no success for a year or more, the student becomes suspected of having a disability and under the Individuals with Disabilities Education Act – the child should be evaluated. This is the process outlined in the NM PED SAT Team Manual, but in our experience it is often not followed.

We strongly disagree with retaining students with disabilities as part of this rule rather than allowing the child's IEP Team (which includes parents) to make the decision that is best for the individual child. Students who receive services under SLD, by the very definition of the eligibility category, will not be reading proficiently. Special education is designed to accommodate and modify, so a student has access to grade level content and specially designed instruction to close any gaps in proficiency.

If the rule were applied to students in special education, exemptions should not be determined by a single teacher who submits paperwork to a principal who submits to a superintendent. Instead, the entire IEP team (which includes the parents) should decide whether or not to retain the child.

Studies show that students who are retained have a higher chance of dropping out (National Center for Education Statistics), and students with disabilities also have a much higher percentage of dropping out. Retaining these students increases the likelihood of them not completing high school.

In response to Acceleration options, we feel that students who are reading above grade level should be evaluated for special education under Gifted. Grade promotion may not be appropriate for every child and may be harmful.

Thank you for your consideration of this feedback.

*Misti Oracion*

Family Liaison - NMPTI  
Parents Reaching Out  
1920 B Columbia Drive SE  
Albuquerque, NM 87106  
(505)247-0192

[www.parentsreachingout.org](http://www.parentsreachingout.org)



“There are only two ways to live your life. One is as though nothing is a miracle. The other is as though everything is a miracle.”

– [Albert Einstein](#)

## Feedback rule: 6.19.9

Misti Oracion <mistioracion@gmail.com>

Thu 5/17/2018 4:52 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

Dear PED,

I want to say thank you for encouraging parent engagement! I strongly believe schools should share assessment data with parents and explain to them what grade level their student is reading. I also believe parents should be part of the team to bring their child's reading level to proficiency.

However, no research supports retention as a solution for poor reading skills; only rigorous research-based reading interventions by highly skilled teachers with strong Orton Gillingham training and parent involvement.

Thank you for considering my feedback as parent!

Misti Oracion

# RE: Comments on proposed 6.19.9 NMAC

Tim Gardner <tgardner@drnm.org>

Thu 5/17/2018 4:56 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

 1 attachment

2018-5-17 DRNM NMPED comments proposed 6.19.9.pdf;

With apologies, please ignore the previous submission of a few minutes ago with the incorrect version attached. Please instead accept these attached comments from Disability Rights New Mexico on the proposed 6.19.9 NMAC. Thank you,

Tim Gardner  
Disability Rights New Mexico  
3916 Juan Tabo Blvd. NE  
Albuquerque, NM 87111  
Phone: (505) 256-3100 / Fax: (505) 256-3184  
*Disability Rights New Mexico is a Protection & Advocacy organization*

\*\*\*\*\*

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**From:** FeedBack, Rule, PED [mailto:Rule.FeedBack@state.nm.us]  
**Sent:** Thursday, May 17, 2018 4:53 PM  
**To:** Tim Gardner  
**Subject:** Automatic reply: Comments on proposed 6.19.9 NMAC

Thank you for your email. The Department considers all feedback received.

Thank you,

PED Rulemaking Team

**From:** Tim Gardner  
**Sent:** Thursday, May 17, 2018 4:52 PM  
**To:** 'Rule.Feedback@state.nm.us'  
**Subject:** Comments on proposed 6.19.9 NMAC

New Mexico Public Education Department:

Please see the attached comments regarding the proposed 6.19.9 NMAC from Disability Rights New Mexico.

Thank you,

Tim Gardner  
Disability Rights New Mexico  
3916 Juan Tabo Blvd. NE  
Albuquerque, NM 87111  
Phone: (505) 256-3100 / Fax: (505) 256-3184  
*Disability Rights New Mexico is a Protection & Advocacy organization*

\*\*\*\*\*

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## DISABILITY RIGHTS NEW MEXICO

3916 Juan Tabo Blvd., NE • Albuquerque, New Mexico 87111

TEL: (505) 256-3100 • FAX: (505) 256-3184

State-wide Toll Free 1-800-432-4682

WEBSITE: [www.drn.org](http://www.drn.org) • EMAIL: [info@drnm.org](mailto:info@drnm.org)

Gary Housepian, Chief Executive Officer

*Promoting and Protecting the Rights of Persons with Disabilities*

17 May 2018

Jamie Gonzales  
Policy Division  
New Mexico Public Education Department  
300 Don Gaspar Ave., Room 101  
Santa Fe, NM 87501

***Submitted by e-mail to: [Rule.Feedback@state.nm.us](mailto:Rule.Feedback@state.nm.us)***

Re: Proposed NMAC 6.19.9

New Mexico Public Education Department:

Disability Rights New Mexico (DRNM) is a private, non-profit organization whose mission is to protect, promote, and expand the rights of persons with disabilities. DRNM is the federally designated Protection and Advocacy program for our state. We write on behalf of our many constituents who would be severely and negatively impacted by the proposed rule at 6.19.9 of the New Mexico Administrative Code.

We are, of course, well aware of Governor Martinez's unsuccessful efforts to pass legislation of the type now proposed as an administrative rule. While we do not doubt that commitment to this issue may be genuine and well-intended, this is the wrong solution to the difficult problem of reading delays. The proposed 6.19.9 NMAC is clearly an effort to usurp the legislative process and create something that future administrations could as easily reverse without input from our legislature. This alone should illustrate why the proposed regulation is the wrong approach to implement such an unworkable and detrimental solution to the literacy problems faced by New Mexico's youth.

The proposed 6.19.9 does not conform to NMSA § 22-2C-6. The Public Education Department may not by administrative fiat ignore or overrule statutory law. Our statutes contain several requirements that the proposed 6.19.9 attempts to circumvent, but perhaps the most clear is the requirement that the student "shall... be... promoted to the next grade if the parent refuses to allow the child to be retained" in 22-2C-6(F)(3)(b). This right of refusal is overtly and illegally removed from parents of K-3 students in the proposal published by the PED.

This proposed rule in no way demonstrates consideration of the broader and longer-term impacts of retention. Research on school retention raises many concerns about the mental health effects on students, which the proposed 6.19.9 does not appear to recognize. Research is similarly clear

that retention, in addition to causing unintended problems for students, has very little positive impact on reading development.

Organizations such as the Center for Development and Learning, the Learning Disabilities Association of America, the National Center for Learning Disabilities, and the National Association of School Psychologists have all published clear evidence of the need for a policy that does more than merely fail and retain students due to a standardized test score. Recent comprehensive and empirical research shows that retention is ultimately harmful. (“The Scarring Effects of Primary-Grade Retention? A Study of Cumulative Advantage in the Educational Career” by Megan Andrew, published 9/26/2014 in *Social Forces*.) Best practices require a much more nuanced approach than what is presented in the proposed 6.19.9.

DRNM believes that the proposal is terribly short-sighted. What is the plan to address the tremendous increase in bullying and behavioral problems the proposed 6.19.9 would create by having many more students with reading delays have to also suffer one or more retentions? Where is the recognition that the entire educational funding formula and state income base will have to be expanded to account for the retentions, those related behavioral interventions, the related needs for additional teachers and staff, etc.?

Retention may indeed be appropriate for some students at some times, but the mandatory proposal in 6.19.9 would be detrimental to many more. Some of the limited “good cause” exemptions indicate recognition that mandatory retention is indeed harmful. If, for example, repeating a grade once is so good for students, why isn’t repeating the same grade twice or more even better? The proposed 6.19.9.10(A)(3) doesn’t explain why “social promotion” is suddenly favorable to retention, but it hides the fact that those students obviously needed something other than the probably devastating retention they will have already suffered once, yet still presumably sets them up for another even more devastating retention the next year.

The three-year limit in the proposed 6.19.9.10(A)(4) is clearly improper and illegal. Many students throughout the state have very little exposure to the English language outside of school, and to punish them with early retention would be a total waste of resources that could be much better invested. This proposal would discriminate against them based on their language and most likely their national origin as well.

DRNM appreciates that the proposal acknowledges students with disabilities in 6.19.9.10(A)(1). However, overall there is woefully inadequate attention to undiagnosed disabilities. A great many of the students who would be retained under 6.19.9 would undoubtedly be students who have some sort of learning-related disability not yet addressed through an Individualized Education Program (IEP). We are quite disappointed that the PED would not take advantage of recognition of a student’s longstanding reading delays to refer that student to the Student Assistance Team for consideration of potentially disabling conditions or more promptly trigger evaluations pursuant to 6.29.1.9(E)(2) NMAC to to qualify the student for, and then establish, an appropriate IEP. The mere vague reference to an academic improvement plan mentioned in the proposed 6.19.9(B) misses way too much of this opportunity. PED’s virtual silence here appears to encourage schools to ignore their Child Find obligations under 20 U.S.C. § 1412(a)(3) and the corresponding regulations at 34 CFR § 300.111.

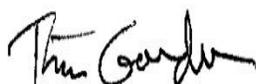
The proposed 6.19.9 completely fails to address the array of interventions necessary to prevent the low reading progress that would lead to retention. Although an academic improvement plan may be useful, or it may not, the proposed rule should, at a minimum, specify a series of efforts to be attempted before retention is imposed. DRNM asserts that Child Find already requires these steps, absent in the proposed 6.19.9. If retention is mandatory, shouldn't other less intrusive and less damaging efforts – such as additional reading time, additional reading instruction, additional progress monitoring, reading mentorship, a tutoring program, plans with parents, plans offered after school, plans offered over the summer, etc. – be mandatory as preliminary interventions?

While DRNM has no opposition to the reporting requirements in the proposed 6.19.9.8(D), we wish PED were more transparent about its intentions with this data. Why be so proscriptive regarding students, but not expect similar achievement from schools? What obligations do schools have to ensure that their students are receiving the appropriate interventions to achieve reading goals? What is the PED doing to ensure that the schools are meeting these obligations?

In summary, while DRNM shares PED's concerns about students not meeting reading achievement goals, this proposed 6.19.9 is the wrong approach and the wrong solution. As proposed, 6.19.9 would be illegal. Please scrap this draft, and work on some ideas that would not merely punish struggling students, but would ensure that they get the necessary interventions to reach their academic potential and succeed. DRNM would very much welcome the chance to work with you on such an endeavor.

Thank you for consideration of these comments.

Sincerely,



Tim Gardner  
Legal Director

## 6.19.9-NMAC\_Proposed-Rule\_Input correct version

Bonnie Murphy <bonniej146@yahoo.com>

Thu 5/17/2018 5:29 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

 1 attachment

6.19.9-NMAC\_Proposed-Rule\_Input\_Bonnie Murphyv2.docx;

Dear Policy, Innovation, and Measurement Staff,

Unfortunately, upon reading what was posted on the public comments today, I discovered that I previously attached my first draft which contained my initial, unbridled thoughts and comments, unedited, with some errors and some of my own perspectives/assumptions. Instead, I had meant to provide you with my finalized version, wherein I had re-read and edited for appropriateness. This is highly embarrassing for me, but more so I do not want to cause any undue damage to the reputations of my colleagues or our NM schools, so I am requesting that, if possible, you would please delete my previous submission and additionally, if possible, please replace it with the attached and correct finalized version. I assure you this is my finalized version. It should be named *6.19.9-NMAC\_Proposed-Rule\_Input\_Bonnie Murphyv2 – Microsoft Word*.

If not possible to delete and replace and if this is to be posted as well, then I will offer my most humble apologies to my colleagues, whom I highly respect, even if we don't agree all of the time.

Please, accept my apologies.

In Sincerity,  
Bonnie Murphy

“Your life doesn't get better by chance. Your life only gets better by change.” Jim Rohn

**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]

*A. Remediation programs, academic improvement programs and promotion policies shall be aligned with alternative school-district-determined assessment results and requirements of the assessment and accountability program.*

*I believe this makes it clear that academic improvement programs and promotion policies should be aligned with school-district-determined assessment results and an assessment and accountability program so creating this new rule is legal and brings clarity to the issue at hand. Schools need more formal guidance in this area; however the school boards need more transparency on their positions and recommendations, more input from parents and staff members, who often have the most up-to-date training and research-based strategies. They also have the most contact with families and students, so the conversations need to be more accessible to those outside of the board whose decisions affect them. Please, provide documentation about where school board decisions are kept, so that the public can look at them, either to decide if they want to place their children in that particular school organization or if they want to work at that school organization.*

**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” (AIP)** means a written document developed by the Student Assistance Team (SAT) that outlines the grade-level literacy content not mastered by the student, and that prescribes specific interventions and 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~~ state-approved assessment required for student literacy that diagnoses and regularly measures the acquisition of reading skills, including listening comprehension (very important for ELs), phonemic awareness, letter knowledge, alphabetic decoding, vocabulary, spelling, comprehension and fluency (subject to grade level) to be given a minimum of three times during the academic year. *Istation only gives Listening Comprehension (LC) assessments to Kindergarteners. First –Third Graders are not provided with LC assessments, even if they are lacking these skills. Also, Fluency is not given to prior to 1<sup>st</sup> Grade in January. Many Istation subskill assessments are not given unless the student either shows a need for remediation or a need for advancement.*

**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-skill performance indicators.

**E. “Intervention”** means the intensive targeted instruction of individual students or small groups of students documented in Tier 1-Tier 3 data collection for SAT, EL, and IEP progress monitoring, as determined by student performance on the benchmark assessment.

**6.29.1.7 DEFINITIONS:**

**BX.** *“Response to intervention (RtI)” means a multi-tiered organizational framework that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a system for making educational programming and eligibility decisions. It is a continuum of school-wide support that contributes to overall comprehensive school improvement efforts. In New Mexico, the RtI framework is called the “the three-tier model of student intervention.”*

**6.29.1.9 PROCEDURAL REQUIREMENTS:**

**E.** *Student intervention system. The school and district shall follow a three-tier model of student intervention as a proactive system for early intervention for students who demonstrate a need for educational support for learning or behavior.*

**(1)** *In tier 1, the school and district shall ensure that adequate universal screening in the areas of general health and well-being, language proficiency status and academic levels of proficiency has been completed for each student enrolled. If data from universal screening, a referral from a parent, a school staff member or other information available to a school or district suggests that a particular student needs educational support for learning or behavior, then the student shall be referred to the SAT for consideration of interventions at the tier 2 level.*

**(2)** *In tier 2, a properly-constituted SAT at each school, which includes the student's parents and the student (as appropriate), shall conduct the student study process and consider, implement and document the effectiveness of appropriate research-based interventions utilizing curriculum-based measures. As part of the child study process, the SAT shall address culture and acculturation, socioeconomic status, possible lack of appropriate instruction in reading or math, teaching and learning styles and instructional delivery mechanisms in order to rule out other possible causes of the student's educational difficulties. The SAT shall create no undue delay for full initial evaluation to determine eligibility for special education for a student who is identified as homeless or in foster care under the state's foster care system or based on criteria to assess housing stability status under the federal McKinney-Vento Act and the 2015 ESSA Title IV, Part B, due to the high mobility of this specific population group. When it is determined that a student has an obvious disability or a serious and urgent problem, the SAT shall address the student's needs promptly on an individualized basis, which may include a referral for a full, initial evaluation to determine possible eligibility for special education and related services consistent with the requirements of Subsections D-F of 6.31.2.10 NMAC and federal regulations at 34 CFR Sec. 300.300.*

**(3)** *In tier 3, a student has been identified as a student with disability or gifted under the state criteria for giftedness deemed eligible for special education and related services, and an IEP is developed by a properly-constituted IEP team, pursuant to Subsection B of 6.31.2.11 NMAC and federal regulations at 34 CFR Sec. 300.321.*

**(4)** *The department's manual, the student assistance team and the three-tier model of student intervention, shall be the guiding document for schools and districts to use in implementing the student intervention system.*

**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 academic improvement.

**H. "Retention Waiver"** means a document/letter that a parent is able to sign to indicate whether they consent or do not consent to their child being retained in the current grade for the next school year with an AIP.

**"Student Assistance Team (SAT)"** means a group consisting of a student's:

- (1) the school's SAT Chairperson**
- (2) the student's Reading teacher(s); our school currently has 4-6**

*Reading Teachers per class for K-1, 6-7 Reading Teachers per class in 2<sup>nd</sup>/3<sup>rd</sup> grades (and will likely have the same model for 4<sup>th</sup>/5<sup>th</sup> grades next year when those grades are added) and 1-3 Reading Teachers per class in middle school or high school classes.*

*school counselor; our school does not have a school counselor.*

- (3) a school administrator or coach with training in RtI; and  
 (4) the student's parent or legal guardian, if they choose to participate;
- and
- (5) who all follow the guidance contained in the state's manuals for RtI and SAT.

**TITLE 6            PRIMARY AND SECONDARY EDUCATION**  
**CHAPTER 29       STANDARDS FOR EXCELLENCE**  
**PART 1             GENERAL PROVISIONS**

**6.29.1.7            DEFINITIONS:**

**CM.**     *"Student assistance team (SAT)" is a school-based group of people whose purpose is to provide additional tier II support (consistent with requirements of the three-tier model of student intervention provided in Subsection ~~D~~E of 6.29.1.9 NMAC) to students who are experiencing academic or behavioral difficulties that are preventing them from benefiting from general education, because they are either performing below or above expectations. (Public agencies may have similar names used for this team, such as "student success team" or "student support team.")* **Emphasis through underlining added by me. This statute definition has a typo in it! Interventions are not addressed in Subsection D (child abuse and neglect), but Subsection E (student intervention) of 6.29.1.9 NMAC! This needs to be corrected or it holds no weight! See above,**  
**6.29.1.9            PROCEDURAL REQUIREMENTS:**

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

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

**A.** The **state** 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 (AIPs) 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~~ AIPs align with **state** department guidance and evidence-based best practices. The department may request to review student ~~academic improvement plans~~ AIPs at any time.

**C.** The determination of a student's literacy strengths and weaknesses **at End of Year (EOY)**, 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 **and the SAT** shall also direct the use of daily intervention, remediation, or alternative programming.

**D.** For ~~kindergarten~~ the statute doesn't say Kindergarten, only grades one through eight, so this is why schools need to be using RtI and the SAT process beginning in 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 **currently in attendance who are** not proficient in reading, as determined by the middle of year benchmark assessment; *our population of students is highly mobile, parents are showing propensity to take their child out of a school who have received a notice of non-proficiency and place them in another school they believe will help their child succeed, sometimes this is the first year and sometimes this is the second year they have been notified.*

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

(c) **number of students with Individualized Education Plans (IEPs) with Reading Goals who are not proficient in reading;**

(d) 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 **still currently in attendance who are** not proficient in reading, as determined by the end of year benchmark assessment; and

(b) **number of students who are no longer in attendance who were not proficient in reading, as previously determined by the middle of year benchmark assessment;**

(c) **number of students who are now not proficient in reading that were not identified by the middle of year benchmark assessment, either because they were not in attendance or because their reading scores declined at any point after the middle of year assessment.** *We have students who were proficient all year long and then were not proficient in the EOY assessment. This is a dilemma, much like another dilemma that appears to need guidance. What if there are students who are at the 42<sup>nd</sup>%, so they are technically Tier 1, but teachers and/or administration is recommending they are recommended for retention and the State Retention Notification Letter is being used to tell parents that the State is mandating their child be retained, when the PED is NOT recommending retention of students who ARE technically proficient in reading? How can we justify recommending retention for students who are proficient in reading, even if it is by a slim margin? I am not asking you to answer that question. My professional opinion is that it should be against the law for LEAs to do that. If a student is proficient and close to not being proficient, then a SAT plan needs to be developed to take effect immediately for the following school year, whether the student is at the same school or not.*

(d) number of retention waiver letters signed by parents or legal guardians of students not proficient in reading **as determined by the end of year benchmark assessment.**

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

(a) number of **returning** students retained as a result of not being proficient in reading, as **previously** determined by the end of year benchmark assessment **and in the June 1 data submission to the department;** *the August 1 deadline would typically be no different from the June 1 deadline because quite often, the students who were recommended for retention and their parents waived or didn't waive will register for the following school year and then not show up when the new school year starts, so the school staff are busy calling to try to verify if they are attending the school*

or not and if not, they will give notification of the open spot and allow another student on the wait list to enroll.

**(b)** number of newly enrolled students retained as a result of not being proficient in reading, as previously determined by their prior school's end of year benchmark assessment and who either 1) their parent or legal guardian consented to retention, or 2) did not. *Who is enrolled and is in attendance or not that has been recommended for retention will not truly be determined until after school has officially started, which is going to be Aug. 13<sup>th</sup> this year, so I would suggest allowing for a couple of weeks each year for actual enrollment data to be recorded and the documentation to be prepared prior to a September 1 submission. Also, it can take a couple of weeks for the student's cumulative file to be transferred to the new school when they transfer to a new school, and there HAS to be a better way of informing the next school about the students' retention recommendations and waivers, SAT and/or IEPs, so that the data is reported and is accurate. There is a hole, a flaw, in that this retention information, as well as SAT and IEP information, is typically not timely enough to be used for accountability and assurance of proper differentiation of instruction and interventions to start the year out right, helping students. When a student has transferred into the school and takes their BOY Istation assessment, it is usually apparent if they were proficient the school year before and may have had a retention recommendation or not. If schools had students take their Istation assessment when they start school, during August, before the BOY assessment, there would be a good heads up about if they were proficient or not and the retention information could more likely be obtained before a September 1 submission. I would recommend another column on the literacy data reporting document that differentiates these two categories. In the future, this information will most likely be streamlined to schools through STARS or some other electronic means, so that parents and families are not unwittingly encouraged to unnecessarily and further increase the complications that ensue for students from high levels of mobility. Having this information readily available would be of great benefit for school and teacher planning and instruction for the best start to the school year for that student.*

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

~~(e)~~**(d)** number of students reading at performance level one, according to his or her grade three individual student report; *I am not sure what performance level one is (a generic term for Tier 1 on Istation?) This needs to be explained more clearly, since Tier 1 is the beginning of the SAT process, Tier 1 is proficient on Istation, and there are other uses for level one or tier 1.*

**(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; *Hopefully, this portion of the data literacy document will be utilized, since the MOY notification meetings (not SAT, just a meeting with a parent and principal, a parent and coach, a parent and teacher, a parent, principal, and teacher, or a parent, principal, teacher, and coach, but very rarely this last scenario) often contain additional reasons such as age, developmental level, EL status, previous school and they received bilingual instruction, and another assessment, such as STEP, and iREAD data, which are mentioned in the 2<sup>nd</sup> letter, the notification letter from the school. Unfortunately, parent meetings may not contain written information for parents about SAT (what it is and what it is for), IEP goals in Reading, or progress reported on a specifically created AIP. Parents need to be educated about these processes in a more intentional way around the state going forward.*

**(e)** copy of the LEA's retention waiver letter(s) template(s); *there were 2 at our school and early on when they were sent in for approval, they were denied because the wording was changed from the template that the Bureau had drafted for all schools to use and did not communicate the policy guidance or statutes for retention that were provided from the department. Are LEA's able to write their own letter about their policy in their progress monitoring plan?*

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

[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~~ **beginning** of year **required state** benchmark assessment, the student's teacher shall notify the student's parent or legal guardian formally, in writing, **within two weeks** and hold a parent-teacher conference. *Mid to end of February is not soon enough to inform families and engage them. Research shows that difficulties students have in school can be avoided or at least minimized through parent and/or family engagement in the child's education, so why wait until nearly 2/3 of the school year is over (especially in a school that may only have significant parent engagement on P/T Conference nights, when all parent surveys are filled out). Why not engage them early and use the Quarter 1 P/T Conferences as opportunities to report on progress?*

(1) Written notification shall include:

- (a) student performance on the benchmark assessment and ongoing progress monitoring;
- (b) specific **data driven and documented Tier 1 classroom** interventions implemented to-date;
- (c) strategies for parents or legal guardians to implement at home; and
- (d) **future** parent or legal guardian options including:
  - (i) daily **intensive** intervention **implemented through a SAT process**;
  - (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 **through data-driven Tier 1 or, if necessary, Tier 2 classroom interventions that will should** lead to student proficiency in reading by the end of the academic year; ~~and~~
- (d) **a timeline of when documentation will be provided (at least once per month and at each quarter) to inform parents or legal guardians** whether or not the student is on track to be college and career ready as measured by **progress monitoring and a date scheduled to review** the student's mid-year benchmark assessment ~~and~~
- (e) **if a student was not proficient the year before, whether retained or not retained, then a SAT process will take place for this student at this parent/teacher conference.**

*Copied from above*

**B.** If a student is not proficient in reading as determined by the middle of year **required state** benchmark assessment, the student's teacher shall notify the student's parent or legal guardian formally, in writing, **within two weeks and with a reminder of the previously scheduled date to hold a parent-teacher conference (for those whose children are significantly on target) or a SAT meeting (for those whose children have made little progress and who are still not proficient) to review their child's performance documentation. The state RtI and SAT guidance documents and manuals shall be followed.**

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

- (a)** student performance on the benchmark assessment and ongoing progress monitoring;
- (b)** specific **data driven and documented Tier 1 classroom or Tier 2 intensive** interventions implemented to-date; *this is important to note, because in the RtI and SAT process, interventions must be conducted first in the general education classroom for students without IEPs or who are not already on a SAT plan, so although it may be obvious to some, it is not always understood, communicated, or implemented properly. Classroom interventions, especially in schools with a co-teaching model, have been proven to be the most effective delivery for the majority (80%) of students in need. Pull-out, even more targeted Tier 2 and 3 interventions should be focused on the 15-20% that do not respond to Tier 1 interventions, for those who have an IEP with a Reading Goal that need Tier 2 interventions, for students in SAT who need targeted Tier 2 Reading Interventions, and for ELs who need additional appropriate Reading Interventions beyond what they should be receiving in the classroom with their peers.*
- (c)** strategies for parents or legal guardians to implement at home; *this is actually important because sometimes a student reaches proficiency in the previous skills discussed and targeted and is now working on the next skills in the systematic and explicit teaching of reading, so parents and legal guardians need to know how to continue to support them and even if they are on target, we want them to keep making forward progress and not fall behind again and*
- (d)** future parent or legal guardian options for students who are still not proficient including:
  - (i)** daily **intensive** intervention **implemented or continued through Tier 2 in the SAT process**;
  - (ii)** remediation; or
  - (iii)** alternative programs.

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

- (a)** the student's performance in comparison to grade-level literacy standards;
- (b)** assessment results that indicate **if** the student is **or is** not on track to meet literacy benchmarks;
- (c)** a **timeline of when documentation will be provided (at least once per month and at each quarter) to inform parents or legal guardians** whether or not the student is on track to be college and career ready as measured by **progress monitoring and a date scheduled to review the student's end of year benchmark assessment-and**
- (e)** if a student is not proficient, whether retained or not retained, then a SAT process will take place for this student at this parent/teacher conference.
- (f)** in the case that the SAT suspects a disability requiring a Tier 3 or Special Education Diagnostic Evaluation, the parent or legal guardian will be provided with the Parent Rights and Responsibilities IDEA document and a consent form that shall be returned after a minimum of 2 days have passed to give the parent or legal guardian time to consider the options available and ask questions, in order to be properly informed of the decision they are making for their child that will affect their child for the rest of their lives.

**C. A The Student Assistance Team (SAT) shall develop an Academic Improvement Plan (AIP) for any student not proficient in reading as determined by the beginning of year benchmark assessment for students who are significantly behind and by the middle of year benchmark assessment for students who are not proficient. The Academic Improvement Plan shall clearly outline formal Tier 2 interventions, progress monitoring activities, delegation of responsibilities for those interventions and associated timelines to ensure student progress toward achieving grade-level literacy proficiency. The state guidance manuals for SAT and RtI shall be followed and if the child is**

determined to need an IEP through the SAT recommendation of testing for a possible disability, the IEP would not replace the AIP.

**D.** If a student is not proficient in reading as determined by the middle of year required state benchmark assessment, the student's teacher shall notify the student's parent or legal guardian formally, in writing, within two weeks and with a reminder of the previously scheduled date to hold a parent-teacher conference (for those whose children are not proficient) or another SAT meeting (for those whose children have made little progress and who are still not proficient) to review their child's performance documentation and a retention recommendation meeting. The state RtI and SAT guidance documents and manuals shall be followed.

(1) Written notification shall include:

(a) student performance on the benchmark assessment;  
 (b) specific data driven and documented Tier 2 intensive 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; or  
 (e) in the case of the parent or legal guardian either not consenting to retention through a retention waiver or consenting to retention on the waiver form for the next school year,

(i) continued daily intensive intervention implemented through Tier 2 and the SAT process the following school year;  
 (ii) summer remediation; and/or  
 (iii) alternative programs.

(d) in the case that the SAT suspects a disability requiring a Tier 3 or Special Education Diagnostic Evaluation, the parent or legal guardian will be provided with the Parent Rights and Responsibilities document and a consent form that shall be returned after a minimum of 2 days have passed to give the parent or legal guardian time to consider the options available and ask questions, in order to be properly informed of the decision they are making for their child that will affect their child for the rest of their lives.

(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.E.** 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. *How is this going to work? I know there is a roster provided to review to see whose scores will be included on a teacher's evaluation, the school's evaluation, and the district's evaluation, but what is the mechanism for the scores to be provided to these teachers? This would be useful information!*

[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 all of the student's Reading teacher(s) to the school principal indicating why promotion is or is not appropriate. Documentation required shall include the reason for or against exemption and an existing academic improvement plan, SAT plan or IEP.

**C.** The school principal or designated school administrator shall review and discuss the recommendation with the team of student's teacher(s), and parent or legal guardian(s), and through the SAT or the IEP Team to determine whether or not the student qualifies for the requested exemption. If the school principal the team determines that, based on the provided documentation, the student qualifies for the requested exemption, the school principal or designated school administrator shall make such a recommendation in writing to the superintendent, if applicable or charter school administrator. The superintendent, if applicable, or charter school administrator principal or designated school administrator shall accept or reject the recommendation in writing. If accepted, the superintendent, if applicable, or principal or designated school administrator will report to the department, in writing, the acceptance or denial, including providing all of the above mentioned documentation in sections 6.19.9.9, A-E, and 6.19.9.10, A-C.

[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, and
- (4) Gifted testing, if requested in writing.

**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 in a team with public staff, board, parent and legal guardian school engagement team input, and with Gifted Endorsed teacher input, in

accordance with Special Education, Gifted, IDEA and NM State guidance, laws and policies, the 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. *Parents sometimes ask for their child to be tested for Gifted and some are told they need to wait until 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> grade, but parents have stated that they are afraid that their child languishes in their predicament for up to two years without going through a SAT process or a Gifted evaluation. This should not be a decision that LEAs (if they are just one charter school or even a district superintendent) should be able to make by themselves without oversight from state guidance documents like the SAT manual or the RtI manual. Students may have non-individualized IEP Goals for Gifted high school students that are generic and all say essentially the same thing, so some Gifted students may not necessarily get what they need and their test scores and dual credit and course grades would show that their strengths are not being nurtured. Student eligibility requirements and procedural requirements established by the LEA team shall be included in the LEA's comprehensive student progression plan. *If schools were adhering to the policies that are actually in place already, like following a SAT, RtI, Gifted Manual, Developing IEPs Manual, etc., then all of this would be unnecessary. Our NM policies and guidelines already provide these options, but some schools don't follow them.**

**B. School principals in a team with public staff, board, parent and legal guardian school engagement team input, and with Gifted Endorsed teacher input, in accordance with Special Education, Gifted, IDEA and NM State guidance, laws and policies,** 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~~ team, the student shall be provided the opportunity to participate in the acceleration option.

**C. When establishing considering individual student eligibility requirements for acceleration, principals and LEAs shall consider, with input from Gifted Endorsed staff and the parent,** 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;~~ *Not having this option of acceleration could be the very reason that the student's attendance and conduct are being triggered; the antecedent to a behavior that affects negative consequences. A student is not able to control their attendance in PreK-3<sup>rd</sup>.*

*They rely on adults for transportation, so it is not expedient to punish them for the adult, who may be struggling with poverty. This appears to be a civil rights issue. There are schools that provide proper incentive and attendance is very high, regardless of demographics, but even those schools have attendance issues with even the brightest of the student population as a result of poverty. The school may also go to great lengths to make sure there is transportation provided with government funding or state funds, however if the funds are not provided, the student should not be punished for a state's budget downfalls or for possibly re-prioritizing the funding unwisely (not to say that is necessarily happening right now). If a possibly Gifted student is denied access to acceleration because of their conduct, this could be a legal discrimination and a federal offense.*

(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, or the student's social worker or private counselor; and *again, when school don't assign or provide school counseling, students have to get counseling services outside of school and parents have to pay for it.*

(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]

# Untitled

bustamante\_rachel24 <bustamante\_rachel24@yahoo.com>

Thu 5/17/2018 10:35 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

I thought holding my son back at first was going to be a bad thing. I didn't want him to feel older or different from his peers. But I realize now that it was a good thing that we held him back to repeat kindergarten. He is reading now at his level his math skills have also improved. He is also more confident and out going.

## ExcelinEd in Action Feedback on 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement

Alexandra Dominguez (Alexandra@excelined.org) <alexandra@excelined.org>

Thu 5/17/2018 4:41 PM

To:FeedBack, Rule, PED <Rule.FeedBack@state.nm.us>;

 1 attachment

NM Early Literacy Rule- Public Comment May 2018.pdf;

Good afternoon,

Attached, please find public comment on New Mexico PED's new proposed rule, 6.19.9 NMAC Early Literacy Remediation, Interventions, and Parental Engagement, on behalf of ExcelinEd in Action.

Thank you for the opportunity to submit our feedback.

Regards,

**Alexandra Dominguez**

Regional Advocacy Director | Regional Legislative Director

Southwest Region

ExcelinEd | ExcelinEd in Action

[alexandra@ExcelinEd.org](mailto:alexandra@ExcelinEd.org) | 786.955.7155 (C)

[[www.ExcelinEd.org](http://www.ExcelinEd.org)][[www.ExcelinEd.org](http://www.ExcelinEd.org)] | [[www.ExcelinEdinAction.org](http://www.ExcelinEdinAction.org)][[www.ExcelinEdinAction.org](http://www.ExcelinEdinAction.org)]



May 17, 2018

Jamie Gonzales  
Deputy Director, Policy, Innovation, and Measurement Division  
New Mexico Public Education Department  
300 Don Gaspar Ave  
Santa Fe, NM 87501

Dear Ms. Gonzales,

I am writing today in response to New Mexico Public Education Department's (PED) proposed new rule, 6.19.9 NMAC, Early Literacy Remediation, Interventions, and Parental Engagement.

ExcelinEd in Action commends the New Mexico PED for placing an emphasis and prioritizing grade level reading in those critical early years between kindergarten and third grade. This proposed new rule is a great step towards ensuring early identification of struggling readers, establishing intensive reading intervention for K-3 students who need more reading help to become successful readers, and notifying and engaging parents early on so they can be part of the solution. The rule allows parents to decide whether their child needs an additional year of reading instruction by being retained in the third grade. This option, when done effectively, can provide struggling readers the additional time they need to catch up with their peers and be successful in fourth grade and beyond.

Research shows that children who are not reading proficiently in third grade are four times more likely to drop out of high school. Poor African American and Hispanic students who are not proficient readers are six times more likely than proficient readers to drop out of high school. The issue transcends education—it is an economic and social problem, too. According to the National Assessment of Adult Literacy (NAAL), 7 out of every 10 prison inmates can't read above a fourth-grade level. High school dropouts are not eligible for 90 percent of the jobs in the economy. And, dropouts make up nearly half of all heads-of-households on welfare. It is imperative to address the illiteracy problem in our schools early; our students' futures depend on it.

We look forward to working with the PED further refine and strengthen this proposed rule to make sure it achieves its intended purpose, which is to place a long overdue laser focus on New Mexico's young struggling readers so that they don't continue to fall through the cracks.

Sincerely,



Alexandra Dominguez  
Legislative Director, Southwest Region  
ExcelinEd in Action