

TITLE 6 — PRIMARY AND SECONDARY EDUCATION
CHAPTER 19 — PUBLIC SCHOOL ACCOUNTABILITY
PART 6 — TITLE I SUPPLEMENTAL EDUCATIONAL SERVICES

6.19.6.1 — ISSUING AGENCY: Public Education Department
[6.19.6.1 NMAC — N, 08/15/2005]

6.19.6.2 — SCOPE: This rule applies to all school districts, public schools, including charter schools, and all state approved supplemental educational services providers who offer or plan to offer such services in New Mexico.
[6.19.6.2 NMAC — N, 08/15/2005]

6.19.6.3 — STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, 22-9-3, 22-9-15 NMSA 1978; 20 U.S. Code Section 6316; 34 Code of Federal Regulations Part 200.
[6.19.6.3 NMAC — N, 08/15/2005]

6.19.6.4 — DURATION: Permanent
[6.19.6.4 NMAC — N, 08/15/2005]

6.19.6.5 — EFFECTIVE DATE: August 15, 2005, unless a later date is cited at the end of a section.
[6.19.6.5 NMAC — N, 08/15/2005]

6.19.6.6 — OBJECTIVE: This rule establishes requirements for:

- A.** supplemental educational services providers who seek to use incentives as a method of promoting selection of their services by parents of eligible children;
- B.** allowable rewards to students to reward attendance, continued participation and achievement related to the supplemental educational services;
- C.** establishing a range of hourly per student rates a provider may charge a school district;
- D.** establishing a sliding hourly fee schedule a provider may charge a school district based on the education level of the tutors being used by the supplemental educational services provider;
- E.** implementation of basic program parameters and required assessments;
- F.** provision of on site audits conducted by eligible school districts and the department;
- G.** establishing that all supplemental educational services providers and eligible school districts will submit all relevant student data; and
- H.** removal of providers from approved list.

[6.19.6.6 NMAC — N, 08/15/2005; A, 08/31/2006; A, 10/31/2011]

6.19.6.7 — DEFINITIONS:

- A.** “**Department**” means the public education department.
- B.** “**Eligible child or eligible children**” means a child or children from low income families as determined by a school district, public school, or charter school for the purposes of allocating federal funds made available under Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as amended.
- C.** “**Incentives**” means any goods, facilities, services, gifts, coupons, discounts, rebates, or cash offered or given to anyone by or on behalf of a supplemental educational services provider to promote selection of their services by parents or guardians of eligible children.
- D.** “**Removal**” means deleting the provider from the list of state approved supplemental educational services providers.
- E.** “**Rewards**” means an acceptable classroom incentive with no redeemable monetary value to an eligible child or that child’s parent or guardian and that is offered to an eligible child only as a reward for attendance, continued participation, or achievement related to a provider’s services.
- F.** “**Supplemental educational services**” means tutoring and other supplemental academic enrichment services that are in addition to instruction provided during the school day and are of high quality, research based, and specifically designed to increase the academic achievement of eligible children on required academic assessments and attain proficiency in meeting the state’s academic achievement standards.
- G.** “**Tutor to student ratio**” means the established number of students a tutor may provide supplemental educational services to at one time.

6.19.6.8 REQUIREMENTS:

A. All school districts, public schools, including charter schools and all state approved supplemental educational services providers who offer or plan to offer supplemental educational services in New Mexico, shall offer an initial enrollment period of at least 10 working days.

B. Supplemental educational services providers shall not directly or indirectly use incentives as a method of promoting selection of their services by parents or guardians of eligible children. Provided, however, that rewards may be offered to eligible children:

(1) to reward attendance, continued participation, or achievement related to a provider's services;

(2) if the reward has no redeemable monetary value to the eligible child or his parent/guardian and is otherwise consistent with accepted classroom incentives, such as pizza parties, ice cream parties, school supplies having nominal value, or the opportunity to order discounted instructional material for the eligible child's personal use; and

(3) parents or guardians of an eligible child or children consent to the offering of such incentives.

C. Beginning school year 2011-2012, all providers of supplemental educational services shall charge an hourly per pupil rate between \$25.00 per hour and \$65.00 per hour. Beginning in school year 2012-2013 all providers of supplemental educational services shall charge an hourly per pupil rate between \$25.00 per hour and \$45.00 per hour.

D. All school districts, public schools, including charter schools and all state approved supplemental educational services providers who offer or plan to offer supplemental educational services in New Mexico, shall adhere to the following requirements:

(1) Each supplemental educational services provider must use a sliding hourly fee schedule when invoicing eligible school districts for services rendered. The sliding hourly fee schedule shall comport as follows:

(a) A supplemental educational services provider may charge the eligible school district its full hourly amount if the tutor has a valid teaching license or a four year degree or greater from an accredited university or college, and the per pupil cap will not be ratably reduced based on the education level of the tutor providing supplemental educational services.

(b) A supplemental educational services provider may charge the eligible school district eighty five percent of its hourly amount if the tutor has less than a four year degree, but more than an associates of arts degree, or its equivalent of 48 credit hours, from an accredited post secondary institution, and the per pupil cap will be ratably reduced by fifteen percent based on the education level of the tutor providing supplemental educational services.

(c) A supplemental educational services provider may charge the eligible school district seventy five percent of its hourly amount if the tutor has less than an associates of arts degree, or its equivalent of 48 credit hours, from an accredited post secondary institution but more than a high school diploma, and the per pupil cap will be ratably reduced by twenty five percent based on the education level of the tutor providing supplemental educational services.

(2) Invoices submitted by supplemental educational services providers must accurately reflect the tutor to student ratio of the tutoring session and the qualifications of the tutor providing services. The invoiceable tutor to student ratios shall comport as follows:

(a) A supplemental educational services provider that maintains a tutor: student ratio of one tutor to three students or less may charge the eligible school district the full hourly amount based on tutor qualifications.

(b) A supplemental educational services provider that maintains a tutor to student ratio of one tutor to four students, one tutor to five students, or one tutor to six students may charge the eligible school district eighty five percent of its hourly amount based on tutor qualifications.

(c) A supplemental educational services provider that maintains a tutor to student ratio of one tutor to seven students or greater may only charge the eligible school district fifty percent of its hourly amount based on tutor qualifications.

E. In its application, each provider of supplemental educational services shall include documentation, as prescribed by the department, that the tutoring services to be offered are consistent with instructional program by

the school district or charter school whose students the provider intends to serve. The department may consult with the school district or charter school to determine whether an applicant has met this requirement.

~~F. A district may, prior to entering into agreement with approved supplemental educational service providers, require providers to participate in training designed to assist providers in providing services consistent with the district's instructional program.~~

~~G. Each student who is enrolled in supplemental educational services must have a student improvement plan, with goals relating to academic improvement based on state standards and consistent with the local district instructional program in place and approved by parents or guardians, appropriate school personnel and chosen supplemental educational services provider before any invoice for services rendered may be paid.~~

~~H. Each student who is enrolled with an approved supplemental educational services provider must be pre and post tested, with an instrument approved in the supplemental educational services provider application to the department. Students must be pre tested in order to determine student achievement goals. Students must be post tested when they have completed the program to document progress.~~

~~I. Parents or guardians, and appropriate school personnel must be notified of student progress in a format that is easily understandable.~~

~~J. Eligible school districts must conduct on site audits of supplemental educational services providers.~~

~~K. The department will conduct on site audits of supplemental educational services providers and eligible school districts.~~

~~L. Each eligible school district and supplemental educational services provider will collect and submit all relevant student data to the department or its authorized contractor upon request.~~

~~M. For the 2012-13 school year, all existing and interested supplemental educational services providers must submit an application to become a supplemental educational services provider.~~

~~N. If a supplemental educational services provider is removed from the approved list, the supplemental educational services provider must wait a minimum of two years before they may reapply to become a supplemental educational services provider in the state of New Mexico.~~

~~[6.19.6.8 NMAC— N, 08/15/2005; A, 08/31/2006; A, 10/31/2011]~~

6.19.6.9 UNFAIR PRACTICES: Supplemental educational services funds are funds that have been provided by grant to the department. The department disburses these funds to school districts and charter schools for purposes of reimbursing providers for services performed pursuant to professional services contracts entered into between districts and providers. The department is not a party to contracts between districts and providers. For purposes of performing supplemental educational services and as a condition of receipt of these public funds, it shall constitute an unfair practice for providers to offer or provide any incentive other than those allowed by this rule or to recruit in a way that is not in accordance with established guidelines and the policies of this rule.

~~A. School districts or charter school employees who learn that a supplemental educational services provider has offered to or actually provided an incentive other than those allowed by this rule, shall:~~

~~(1) promptly notify the provider in writing to cease and desist this practice immediately;~~

~~(2) promptly notify any parent or guardian that any incentive other than those allowed by this rule may not be offered by a provider and may not be accepted by the parent or guardian; and~~

~~(3) notify the department in writing if a provider fails or refuses to cease or desist in offering or providing non allowed incentives.~~

~~B. The department upon receiving a written notification under this section or upon receiving a complaint from any other sources, may, after verifying such offering:~~

~~(1) notify the provider in writing to cease and desist this practice immediately because any incentive other than those allowed by this rule may not be offered by a provider nor accepted by the parent or guardian;~~

~~(2) notify parents or guardians that any incentive other than those allowed by this rule may not be offered by a provider and may not be accepted by the parent or guardian;~~

~~(3) notify appropriate authorities of suspected conduct that may constitute soliciting or receiving illegal kickbacks in whole or in part with public money.~~

~~C. School district administrators or charter school administrators may not hold a position or work on behalf of any supplemental educational services provider unless the school district, school or charter school is an approved supplemental educational services provider.~~

~~_____ D. _____ If a school district or charter school employee learns that a supplemental educational services provider is recruiting in a way that is not in accordance with established district guidelines and the policies of this rule, that person shall:~~

~~_____ (1) _____ promptly notify the provider in writing to cease and desist this practice immediately; and~~

~~_____ (2) _____ notify the department in writing if a provider fails or refuses to cease or desist in recruiting in a manner not allowable.~~

~~_____ E. _____ Eligible school district personnel may not show favoritism to any supplemental educational services provider.~~

~~[6.19.6.9 NMAC N, 08/15/2005; A, 08/31/2006; A, 10/31/2011]~~

~~**6.19.6.10 REMOVAL OF PROVIDERS:** Supplemental educational services providers must strictly adhere to their approved application and the policies of this rule. If any provider demonstrates a pervasive pattern of violating any aspect of their application or any part of this rule they will be removed from the state approved list of supplemental education services providers. Providers will be removed from the state approved list of supplemental educational services providers if there are any violations of test security of the New Mexico standards based assessment. In addition, providers will be removed for failing to contribute to the academic improvement of students as determined by the state evaluation. Each supplemental educational services provider that is to be removed may ask for an opportunity to clarify reasons for dismissal and request an appeal. A district or charter school has the option not to enter into a contract with a supplemental educational services provider who fails to meet the terms of the contract in the preceding year or does not provide services to eligible students who have requested their services in the preceding year.~~

~~[6.19.6.10 NMAC N, 08/31/2006; A, 10/31/2011]~~

~~**HISTORY OF 6.19.6 NMAC: [RESERVED]**~~