

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number: HB 41aa**

**52nd Legislature, 1st Session, 2015**

**Tracking Number: .198368.1**

**Short Title: School Grade Promotion & Retention**

**Sponsor(s): Representatives Monica Youngblood and Nora Espinoza and Others**

**Analyst: Christina McCorquodale**

**Date: February 20, 2015**

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**AS AMENDED**

**The House Floor amendment:**

- removes the phrase “grades one through” on page 7, line 8, and replaces it with “grade.”

**The House Education Committee amendments:**

- strike the definition of “district reading plan” and renumbers succeeding paragraphs accordingly (see “Technical Issues,” below);
- expand the definition of “reading proficiency” to include a score on a screening assessment as well as the standards-based assessment;
- strike the redundant instance of the word “grades” on page 5, line 22; and
- change an internal reference on page 9, line 24, subsection G, which applies to students in grades 4-8, to Subsection E, which applies to students at the end of grade 3 (see “Technical Issues,” below).

**Original Bill Summary:**

HB 41 repeals current remediation and promotion provisions in the *Assessment and Accountability Act* in the *Public School Code* and creates a new section in the act that requires, beginning with school year 2015-2016, a student who is not:

- proficient in reading at the end of grades K-3 be provided with intensive targeted instruction;
- proficient in reading in grade 3 be retained and provided with intensive targeted instruction; and
- academically proficient at the end of grades 4-8 not be retained but provided with intensive remediation.

The new section also defines a number of terms:

- “district reading plan” means a student-centered tool developed to define the role of the reading improvement plan that addresses methods to:
  - improve student learning; and
  - identify specific measures of a student’s progress in reading;
- “intervention” means targeted instructional practice for small groups of students or individual students that is aligned with the results of a valid and reliable assessment, and if applicable, with Response to Intervention (RtI);
- “reading improvement plan” means a written document developed by the student assistance team (SAT) that describes the specific reading standards required for a certain grade level that a student has not achieved and that prescribes specific remediation programs that have demonstrated effectiveness and can be implemented during the intensive targeted instruction within the school day or extended day or week programs and with tutoring as determined by the SAT;
- “reading proficiency” means a score on the statewide standards-based assessment that is higher than the lowest level established by the department;
- “remediation programs” includes summer school, extended day or week programs, tutoring, progress-based monitoring, and other research-based models for student improvement;
- “school district” includes both a public school district and a locally chartered or state-chartered charter school;
- “screening assessment” means the assessment that measures the acquisition of reading skills, including but not limited to phonological awareness, phonics, spelling, reading fluency, vocabulary, and comprehension approved and provided by the department;
- “student assistance team” means a group consisting of a student’s:
  - teacher;
  - school counselor;
  - school administrator;
  - parent; and
  - if the student or parent wishes, a student advocate chosen by the student or parent;
- “valid and reliable assessments” means assessments that are:
  - appropriate to targeted populations;
  - provide predictive values; and
  - are thoroughly tested, peer-reviewed, and accepted by the authorities and practitioners in the field.

HB 41 contains a variety of provisions according to multiple grade level configurations, as follows:

**For Students in Grades K-3:**

- Using 2013-2014 school year data, public schools are to establish baseline reading proficiency assessment data (see “Technical Issues,” below) to include reading performance levels based on a screening assessment approved and provided by the Public Education Department (PED).
- Beginning with school year 2015-2016:
  - school districts shall provide intervention, remediation, and reading improvement programs to K-3 students who do not demonstrate reading proficiency;
  - intervention, remediation, and reading improvement programs, shall be required to be aligned with the screening assessment results and state standards; and
  - a reading improvement plan (RIP) must be implemented for students not demonstrating proficiency that requires a school district, at the beginning of a school year, to administer a screening assessment to:
    - kindergarten students to determine reading skills, including phonological awareness, letter recognition, and oral language skills; and
    - students in grades 1-3 to measure reading skills, including phonological awareness, phonics, spelling, reading fluency, vocabulary, and comprehension.
- As determined by the screening assessments, a SAT must immediately develop a RIP for K-3 non-proficient students that identifies a student’s reading deficiencies and that includes intervention and remediation programs and specific strategies for a parent to use in helping the student achieve reading proficiency.
- Beginning with school year 2016-2017, the parent of a student who is not proficient in reading at the end of the first grading period must be given notice that the student will be provided with intensive targeted instruction.
- At the end of the grade 3, promotion and retention decisions for each student (see “Technical Issues,” below) are to be based on a determination that a student is:
  - proficient in reading and will enter the next highest grade;
  - not proficient in reading and required to participate in a required level of remediation; however, upon certification by the school district that the student is proficient in reading, the student shall enter the next highest grade; or
  - not proficient in reading after completion of the prescribed intervention and remediation program shall be retained in the same grade with a RIP that is different from the prior year’s RIP developed by the SAT so that the student may become proficient in reading.
- No student shall be retained for a total of more than one school year between grades K-3 as a result of not having attained proficiency in reading.

- While a parent cannot waive the right to retain their child, the parent can refuse for their child to participate in any prescribed intervention.

**For Students in Grades 4-8:**

- Intervention and remediation programs, RIPs, and promotion policies must be aligned with school-district approved, valid and reliable assessment results, and state standards.
- No later than the end of the second grading period of each school year, the parent of a student who is not academically proficient must be notified in writing.
- A conference with the SAT must be held to discuss strategies, including intervention and remediation programs available to assist the student in becoming academically proficient.
- The student’s specific academic deficiencies and the available strategies and intervention and remediation programs must be explained to the student’s parent.
- A written intervention plan is required to be developed that contains timelines, academic expectations, and the measurements to be used to verify that a student has overcome academic deficiencies.
- The parent shall be provided with specific strategies to use in helping the student achieve reading proficiency.
- The intervention and remediation programs and reading improvement plan must be implemented immediately.
- Promotion and retention decisions (see “Technical Issues,” below) for each student at the end of grades 4-8 are based on the determination that a student is:
  - academically proficient and can enter the next highest grade; or
  - not academically proficient and must participate in a required level of remediation. In this case, an academic proficiency plan is required to be developed by the SAT outlining timelines and monitoring activities to ensure progress toward overcoming the student’s academic deficiencies.
- An alternate program is required to be immediately provided for an academically deficient student who has received an intervention and remediation program that is different from the previous year but fails to become academically proficient at the end of that year as measured by grades, screening assessment performance, and other measures identified by a school district.

With regard to assessment of student in grades K-8, the bill requires a school district to assess a student’s growth in reading and other academic subjects by using:

- a PED-approved screening assessment in grades K-2; and
- the statewide standards-based assessment in grades 3-8.

## **For Students in Grades 9-12, HB 41 Requires:**

- The cost of summer school and extended day intervention and remediation programs to be the responsibility of the parent, unless parents are determined to be indigent as defined by the department, in which case the school district must bear those costs.

Finally, HB 41 includes Subsection M that outlines certain exemptions; however, as explained under “Technical Issues” below, the internal reference to Subsection G appears to be in error.

### **Fiscal Impact:**

HB 41 does not contain an appropriation.

In the Legislative Finance Committee Fiscal Impact Report (FIR) for HB 41, during the previous legislative sessions, PED has indicated that the cost of implementing this bill will be absorbed by school districts and charter schools.

### **Fiscal Issues:**

#### ***PED Analysis***

PED analysis indicated that as part of the Executive budget request, funding was requested to support New Mexico Reads to Leads!<sup>1</sup> program that is aligned with HB 41.

PED funding request is \$3,600,000 to support:

- DIBELS Next<sup>2</sup> and IDEL<sup>3</sup> K-3 formative screening assessment.
- Professional development for school administrators, teachers, reading coaches, and parents with professional development on the following:
  - evidence-based reading instruction and intervention aligned with Common Core State Standards;
  - using formative assessment data to drive instruction; and
  - strategies for parents to support students’ reading acquisition at home.

PED will require districts to intervene with those students not proficient and anticipates that 24,000 students (6,000/grade level K-3) will need additional reading support. District funding request is \$11,900,000 to support:

- \$1.4 million for reading coaches to support smaller, rural districts;
- \$10.1 million for Request for Application (RFA) process to provide funding to support reading coaches and interventions for the district level that will support schools with implementation of the formative assessment; and

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<sup>1</sup> The New Mexico Reads to Lead! Initiative funds a reading K-3 Formative Assessment System is provided to districts at no cost. It also provides regional and district reading coaches, supports for intervention, and professional development for parents, teachers, reading coaches, and administrators.

<sup>2</sup> DIBELS Next is an assessment used to measure the acquisition of early literacy skills from kindergarten through sixth grade.

<sup>3</sup> IDEL is a research-based formative assessment series designed to measure the basic early literacy skills of children learning to read in Spanish.

- remaining \$400,000 will be used to ensure existing programs remain funded and expand the program by allowing more districts and charter schools to participate.

### ***K-3 Plus***

The Legislature may wish to consider funding the K-3 Plus program (see “Background,” below) as a mandated state initiative. K-3 Plus is currently funded as an appropriation to the statutorily created “K-3 Plus Fund” administered by PED. The *General Appropriations Act of 2014* included:

- \$21,281,500 appropriated for the K-3 Plus program; and
- language requiring that PED use the final unit value set for school year 2013-2014 as the basis for funding June, July, and August 2014 K-3 Plus programs.

Statute requires that K-3 Plus programs are funded at no less than 30 percent of the unit value per student based on enrollment at each individual school program on the 15<sup>th</sup> day of the program. Based on a final unit value for school year 2013-2014 of \$3,817.55, each participating student would generate at least \$1,145.26.

### **Technical Issues:**

- The term “district reading plan” is only used in Subsection A and not in any other part of the bill.
- Baseline data from school year 2013-2014 for grades K-3 may not be available in those districts that did not participate in DIBELS Next or IDEL for that year.
- Throughout HB 41, the term “student assistance team” is used, however on page seven, lines 18 and 19, “student assessment team” is used. It is not immediately clear whether these two terms are referring to the same team. The sponsor may wish to clarify.
- In the bill’s title (page 1, lines 12-14), HB 41 states that a student who is not proficient in reading at the end of kindergarten or first or second grade may be retained; however, the bill provides no process for the retention of these students.
- In Section 1, Subsection E (page 6, lines 15-18) the sponsor may wish to amend the bill to specify who determines promotion and retention of each student.
- In Section 1, Subsection E (page 6, beginning on line 15) explains the promotion and retention decisions at the end of grade 3; however, this subsection also requires that a student be retained for no more than one school year between grades K-3, without addressing promotion or retention of students in grades K-2.
- In Section 1, Subsection G (page 7, 18) the sponsor may wish to amend the bill to define “academically proficient.”
- Subsection H (page 8, lines 6-8) does not indicate who makes grade promotion decisions.
- The sponsor may wish to verify whether the reference to Subsection G on page 9, line 24 is correct.

## **Substantive Issues:**

### ***Current Law***

If enacted, HB 41 would remove the provisions in current law that allows a parent to sign a waiver indicating the parent’s desire that a student be promoted to the next higher grade. However, the bill indicates that a parent may sign a waiver for his child to not participate in required level of remediation if they are not proficient in reading.

In 2000, the Legislative Education Study Committee (LESC) endorsed legislation that was enacted to address students not achieving proficiency at grade level but promoted to the next grade despite being unprepared – a practice known as “social promotion.” Current provisions state:

- “academic proficiency” means mastery of the subject-matter knowledge and skills specified in state academic content and performance standards for a student’s grade level;
- a student in grades 1-7 who is not academically proficient after completing a prescribed remediation program may be:
  - retained in the same grade for no more than one school year with an academic improvement plan developed by the student assistance team; and once the student becomes academically proficient, the student enters the next higher grade; or
  - promoted to the next grade if the parent refuses retention and signs a waiver indicating the parent’s desire that the student be promoted to the next higher grade with an academic improvement plan designed to address specific academic deficiencies. If the student promoted through parental waiver still fails to achieve grade-level proficiency at the end of that year, the student must be retained in the same grade for no more than one year in order to have additional time to achieve academic proficiency; and
- a student who is not academically proficient at the end of grade 8:
  - must be retained in that grade for no more than one school year to become academically proficient through an academic improvement plan that is clear, specific, and developed by the student assistance team; or
  - if the student assistance team decides that retention will not help that student, the team must design a high school graduation plan to meet the student’s needs for entry into the workforce or a postsecondary educational institution.

### ***Student Proficiency in Reading***

HB 41 defines “reading proficiency” as a score on the statewide standards-based assessment that is higher than the lowest level established by the department. As seen in the table below, PED has established four proficiency levels: Beginning Step, Nearing Proficient, Proficient, and Advanced. Grade 3 is the first year students are tested using the standards-based assessment.

As illustrated in the table below:

- 48.2 percent did not achieve a proficient score on the standards-based assessment (i.e., 24.3 percent scored Beginning Step and 23.9 percent scored Nearing Proficient); and

- 51.8 achieved a proficient score (i.e., 45.3 percent scored Proficient and 6.5 percent scored Advanced).

### Third-Grade Reading Proficiency – 2013-2014

NM Public Schools	Number Tested	Beginning Step %	Nearing Proficient %	Proficient %	Advanced %	Proficient & Above %	Computer Based Testing %
<b>All Students</b>	25,462	24.3	23.9	45.3	6.5	51.8	16.7
Female	12,534	20.2	23.8	48.3	7.7	55.9	16.9
Male	12,926	28.2	23.9	42.5	5.4	47.9	16.4
Caucasian	6,333	14.6	18.0	55.5	12.0	67.4	17.9
African American	574	26.3	25.6	43.4	4.7	48.1	9.2
Hispanic	15,672	26.3	25.4	43.5	4.8	48.3	15.3
Asian	354	9.9	13.8	57.3	18.9	76.3	8.8
American Indian	2,522	37.6	30.1	30.1	2.2	32.3	24.8
Economically Disadvantaged	18,926	28.7	26.4	40.7	4.1	44.8	17.3
Students w Disabilities	3,645	62.8	18.1	14.7	4.4	19.0	14.8
English Language Learners, Current	5,633	38.9	27.4	31.3	2.4	33.7	14.2
English Language Learners, Exited	798	9.8	21.2	61.0	8.0	69.0	18.0

**Source:** PED

#### **Background:**

##### ***Promotion and Retention***

According to the Education Commission of the States (ECS), for many years, American schools commonly practiced what is called “social promotion,” the advancement of struggling students from one grade level to the next with the intent of keeping children in the same peer group, in the hopes that students would reach grade-level achievement levels in a subsequent school year. However, as a part of states’ standards, assessment and accountability initiatives starting in the mid-1990s, states and districts began to implement bans on social promotion, intending to keep children in the same grade level until they could demonstrate mastery of grade-level skills and knowledge. While at first glance retention may seem to be a reasonable means of assuring that students gain grade-level proficiency, a number of research studies have indicated that neither retention nor social promotion positively influences students.

Research on retention proposes that:

- minority, male, urban, and poor students are disproportionately more likely to be retained;
- retention increases students’ likelihood of eventually dropping out;
- retention lowers self-esteem and self-confidence; and
- retained students are likely to remain below grade-level proficiency levels.



Critics of social promotion, however, counter that:

- socially promoted students, when they do not drop out, graduate with insufficient skills and knowledge, leaving them inadequately prepared for employment and postsecondary education;
- social promotion devalues the high school diploma; and
- social promotion suggests to students that hard work is not necessary to achieve goals.

When considering promotion/retention policies, policymakers should examine:

- Is teacher quality an issue? Students under inadequately prepared teachers will find greater difficulty meeting the high grade-level standards recently adopted in many states.
- Are teachers sufficiently trained in identifying student learning problems and providing suitable interventions?
- Are there early interventions to address academic difficulties before students get far behind in their skills? By the time the results of the statewide assessment are released, it often is too late to implement an intervention plan.

States and districts should consider as vital components of retention policies an early identification and individualized intervention program, after-school or Saturday tutorials, and targeted summer school programs. Without quality time focused on student's individual needs, it is unlikely that struggling students will attain grade-level proficiency.

Practices such as looping (in which students remain with the same teacher and classmates for more than one academic year), smaller class size, and multi-age classrooms also have been proposed as means to help teachers identify struggling children and provide them with individualized instruction. However, the success of these latter three approaches indisputably rests on teacher quality; students in a small class or spending multiple years with an ineffective teacher will not make adequate progress toward grade-level proficiency.

### ***Third Grade Retention in Florida***

During 2013 interim, the committee heard testimony relating to the impact of third grade retention in Florida. Referring to a committee handout, the professor informed the committee that, in the past, public schools tended to promote students to the next grade level even if they had very low academic proficiency. He also noted that past research has been severely limited by its inability to account for unobservable differences between retained and promoted students.

The professor provided the committee with some background on Florida's policy, noting that:

- the policy was first enacted statewide in 2002;
- third grade students were required to meet the level two benchmark on the state's reading exam in order to be default promoted to the fourth grade; and
- students could receive one of a variety of exemptions and be promoted even if they scored below the threshold.

In addition, regarding intervention rather than retention, the professor informed the committee that retained students were required to:

- attend summer school;
- be placed in the classroom of a “high-performing teacher”;
- have developed academic improvement plans; and
- receive an additional 90 minutes of daily reading instruction during the school year.

The professor summarized the findings for retained students by indicating that:

- retention had an effect that declines over time, but is still distinguishable and meaningful in size as late as seventh grade;
- there is a similar positive effect on fifth grade science tests; and
- results are similar on low-stakes standardized tests.

The professor concluded and informed the committee that the research was not able to completely separate the effect of retention from that of other interventions tied to the policy, but did show that assignment to a “high quality” teacher in the retained year is not driving the results. He concluded by stating that there is strong evidence that remediation under a policy similar to Florida’s has a large and sustained positive effect on student achievement.

In response to a committee member’s question about requiring retained students in Florida to receive an additional 90 minutes of daily reading instruction during the school year, the professor responded that Florida spent over \$700 million on remedial instruction, but he was not sure how the 90 minutes of daily reading was implemented.

### ***Early Literacy and Interventions LESC 2014 Interim***

In a joint meeting with the Legislative Finance Committee in August 2014, the LESC heard testimony on national trends in early literacy interventions by a professor of education in the Harvard Graduate School of Education and by a policy analyst with the ECS.

In response to a committee member’s comment relating to the Legislature’s discussions on mandatory retention and early interventions, the professor explained that the state needs to focus on improving schools’ overall quality of classroom instruction, not just interventions, including professional development that is focused on improving the quality of daily instruction and academic language development. She also emphasized the need to track data for students as a group and not just the individual.

Describing her focus on children from minority, multi-lingual, and socio-economically disadvantaged backgrounds, the professor compared New Mexico’s demographics with those of the rest of the country:

- 33 percent of children ages birth through five in New Mexico live in poverty, compared to 26 percent of US children among the same age group; and
- 22 percent of children and youth in New Mexico are children of immigrants, compared to 24 percent in the US.

A majority of these children, this testimony emphasized, are generally not fluent in English, creating an obstacle to their proficiency in literacy.

Among other points, this testimony:

- noted that it is equally important to create partnerships with adults to increase their capacity to assess and support children’s language and literacy development; and
- emphasized the need to support good teaching with high-quality and comprehensive curricula that promote language development.

Beginning with the value of assessments of reading skills in the early grades, the ECS testimony reported that policies nationwide indicate that:

- 33 states (New Mexico among them) and the District of Columbia assess reading proficiency in at least one grade, between pre-K and grade 3;
- 19 of those states assess in grades K-3;
- three states begin assessing in pre-K;
- nine states do not assess until grade 3, which is considered too late for remediation;
- 30 states and the District of Columbia offer some type of intervention; and
- 16 states and the District of Columbia require third-grade retention.

In New Mexico, this testimony continued:

- all K-3 students are assessed;
- continuous assessments for monitoring student progress are in place;
- an individualized reading plan is created for those students who are not reading on grade level and do not meet reading proficiency standards;
- extra time in the student’s day or year is in place for the implementation of reading programs; and
- professional development is provided to teachers.

The ECS testimony also identified the components of a strong reading policy:

- early identification/assessment of pre-K/kindergarten;
- early intervention outside of normal school hours;
- highly qualified reading teachers with pre-service teaching programs to offer certification;
- assignment of highly effective teachers to those students with the greatest need;
- parental involvement;
- ongoing assessment; and
- program evaluation.

### ***Current Statewide K-3 Reading Screening Assessment***

PED plans to continue to provide DIBELS Next and IDEL as tools selected for the state’s K-3 screening assessment. In school year 2013-2014:

- 100,303 students participated in the DIBELS Next assessment, an increase of 26,032 from school year 2012-2013; and
- IDEL was administered to 8, 567 students in school year 2014-2015, an increase of 2,422 from school year 2012-2013.

### ***K-Plus Program***

In 2003, legislation was enacted to create the Kindergarten Plus pilot project in four school districts as a three-year study administered by PED. Kindergarten Plus extended the school year 40 days for participating kindergarteners for the purpose of demonstrating that additional time in kindergarten narrows the achievement gap between disadvantaged students and other students.

In 2006, LESC-endorsed legislation was enacted to amend the statute to extend the Kindergarten Plus pilot project to a six-year study and to expand the project beyond the original four school districts to allow applications by any other school district with high-poverty schools, where 85 percent or more of the students are eligible for free or reduced lunch.

In 2007, legislation endorsed by the LESC was enacted to create K-3 Plus, a six-year pilot project that extends the school year in kindergarten through third grade by at least 25 instructional days, starting up to two months earlier than other classes.

Patterned after Kindergarten Plus, the K-3 Plus pilot project was designed to demonstrate that increased time in kindergarten and the early grades narrows the achievement gap between disadvantaged students and other students, increases cognitive skills, and leads to higher test scores for all participants. K-3 Plus, which is administered by PED, provides additional time on literacy, numeracy, and social skills development of the participants.

In 2012, LESC-endorsed legislation was enacted to convert K-3 Plus from a pilot project to an established program in PED.

### **Committee Referrals:**

HEC

### **Related Bills:**

SB 66 *School Grade Promotion & Retention*

SB 149 *Early Literacy Act*