

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 69aaa

50th Legislature, 2nd Session, 2012

Tracking Number: .188465.1

Short Title: Limit School Retentions through Intervention

Sponsor(s): Representative Mary Helen Garcia and Others

Analyst: Phil Baca

Date: February 16, 2012

AS AMENDED

The House Floor Amendment 1:

- strikes all House Judiciary Committee amendments except the one that requires school districts to provide a form to be signed by the parent, when the parent refuses to allow the student to participate in interventions prescribed in the reading improvement plan;
- adds language in the title to clarify that a student who is not proficient in reading at the end of third grade is to be retained and provided with intensive remediation, with certain exceptions;
- adds the term “academic proficiency” and defines it as “a score on the statewide standards-based assessment that is higher than the lowest level established by the department”;
- adds language to require promotion and retention decisions for third grade students beginning with school year 2013-2014;
- deletes but reinserts at the end of subsection F “no student shall be retained for a total of more than one school year between kindergarten and grades one through three as a result of not having attained reading proficiency”; and
- inserts a new subsection F to allow a parent of a student in grades kindergarten through three, identified as not being proficient in reading after completion of prescribed intervention and remediation programs, to petition the school principal to promote the student to the next grade if:
 - the student has attended school for at least 95 percent of the instructional time during the school year;
 - the student has participated in all required levels of remediation prescribed by the school district in the reading improvement plan; and
 - the parent of the student signs a contract that outlines a reading intervention plan for the next grade.

Finally, the amendment renumbers and reletters the subsections accordingly.

The House Judiciary Committee amendments:

- strike the House Education Committee amendment;

- **add language to require school districts to provide a form to be signed by the parent, when the parent refuses to allow their student to participate in interventions prescribed in the reading improvement plan;**
- **insert a new subsection to allow a parent of a student in grades kindergarten through three, identified as not being proficient in reading after completion of prescribed intervention and remediation programs, to petition the school principal to promote the student to the next grade if:**
 - **the student has attended school for at least 95 percent of the instructional time during the school year;**
 - **the student has participated in all required levels of remediation prescribed by the school district in the reading improvement plan; and**
 - **the parent of the student signs a contract that outlines a reading intervention plan for the next grade.**
- **reletter the succeeding subsections accordingly; and**
- **changes an internal cross reference.¹**

The House Education Committee amendment corrects an erroneous cross reference in the bill (see “Original Technical Issues,” below).

Original Bill Summary:

HB 69 repeals the current remediation and promotion provisions in the *Assessment and Accountability Act* in the *Public School Code* and creates a new section in the act to provide that a student who is:

- not proficient in reading at the end of kindergarten, grade 1, and grade 2 be provided with intensive remediation;
- not proficient in reading at the end of third grade be retained and provided with intensive remediation; and
- not academically proficient at the end of grades 4 through 8 be provided with intensive remediation.

The bill also provides for assessment, intervention, and remediation programs to address deficiencies identified between grades K-8.

HB 69 also defines a number of terms:

- **“educational plan for student success”** means a student-centered tool developed to define the role of the reading improvement plan within the public school and the school district that addresses methods to improve student learning and success in school and that identifies specific measures of a student’s progress in reading;
- **“intensive targeted instruction”** means extra instruction in either small groups or as individuals that shall be no less than 20 minutes per day and five days per week or the equivalent;

¹ With amendment 1 (which strikes HEC amendment number 1) and amendment 5, the HJC amendments seem to have reinserted an erroneous cross reference in the bill (see “Original Technical Issues” below).

- **“intervention”** means targeted instructional practice for individual students or small groups of students aligned with the results of a valid and reliable assessment and, if applicable, response to intervention as defined in Section 22-13-6 NMSA 1978 and department rule;
- **“reading improvement plan”** means a written document developed by the student assistance team 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 during summer school or extended day or week programs and with tutoring;
- **“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; and
- **“valid and reliable assessments”** means assessments that:
 - are appropriate to targeted populations;
 - provide predictive values; and
 - are thoroughly tested, peer-reviewed, and accepted by authorities and practitioners in the field.

HB 69 contains a variety of provisions according to multiple grade level configurations, as follows:

For Students in Grades K-3:

- Using 2012-2013 school year data, public schools are to establish baseline reading proficiency assessment data to include reading performance levels based on a Public Education Department (PED) approved screening assessment;
- Beginning with school year 2013-2014:
 - local school districts will be required to bear the cost of intervention, remediation, and reading improvement programs for students who do not demonstrate reading proficiency;

- intervention, remediation, and reading improvement programs and promotion policies will 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 student assistance team (SAT) must immediately develop a RIP for 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 2012-2013, 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 third grade, promotion and retention decisions for each student 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 certain 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 and upon the recommendation of the teacher and school principal is 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.

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 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 through 8.

For Students in Grades 9-12, HB 69 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 69 includes a 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 69 does not contain an appropriation.

Fiscal Issues:

The appropriation to the State Equalization Guarantee distribution (or Public School Funding Formula) in House Bill 3a, *Education Appropriation Act*, includes \$7.5 million to support early reading initiatives of school districts.

According to the PED bill analysis:

- the Executive budget recommendations include approximately \$2.9 million to support early identification and support of struggling readers;
- these funds will be used to support interventions for struggling readers, reading coaches, and district level training on effective reading instruction;

- with approximately 108,000 students in grades K-3, PED plans to procure and provide a formative assessment tool for use with all students;
- current formative assessment tools on the market range from \$1/student to upwards of \$50/student;
- because intervention support will be included in a separate portion of the budget, PED anticipates spending \$2.0 million annually to screen students in grades K-3;
- PED proposes that interventions aligned to student data be used to support struggling readers;
- intervention must be systemic and start well before third grade if we expect increased student achievement;
- in addition to screening and intervention, PED will use the remaining funds to support district leadership with training on effective reading instruction and how to use formative assessment data to drive interventions;
- \$800,000 will be used for district training; and
- PED proposes hiring 1 FTE at approximately \$88,000 to guide the work at PED and support districts as they implement the screening tool and align interventions.

The PED bill analysis also states that:

- \$9.1 million would be needed to provide for school district costs;
- after students are screened, PED will require districts to intervene with the student's struggling the most;
- PED anticipates that 24,000 students (6,000/grade level K-3) will need additional reading support;
- PED requests \$120/students, for a total of \$2,800,000; and
- \$6,300,000 will be used to support reading coaches at the district level that will support schools with implementation of the formative assessment tool and interventions based on \$85,000 for one reading coach for six elementary schools. Districts with fewer than six elementary schools could be distributed through a regional entity, such as a regional education cooperative, to provide coaching support to multiple elementary schools.

Original Technical Issues:

- In the title, (page 1, lines 12-14) HB 69 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.
- Subsection E (page 6, beginning on line 7) explains the promotion and retention decisions at the end of grade 3; however, this subsection also requires that no 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.
- The provisions in subsection G (page 7, lines 7-22) use the term "academically proficient"; however, the bill does not define the term.
- The provisions in subsection M (page 9, lines 15-25, and page 10, lines 1-11) outline certain exemptions for subsection G (page 7, lines 7-22); however, the exemptions may have been intended to apply to the retention of students in grade 3 outlined in subsection E (page 6, lines 17-23).

- According to the Legislative Finance Committee Fiscal Impact Report, the PED bill analysis “indicates the retention policy won’t go into effect until school year 2013-2014; however, it is not clear that the retention policy won’t be in effect during the 2012-2013 school year.”

Substantive Issues:

If enacted, HB 69 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.

Student Proficiency in Math and Reading

The data from the 2011 National Assessment of Educational Progress (NAEP), known as the Nation’s Report Card, show New Mexico fourth-graders performing somewhat better in math than in reading: 30 percent proficient in math versus 21 percent proficient in reading. In neither case, according to NAEP, does the percentage differ significantly from that in 2009 (26 percent and 20 percent, respectively). However, NAEP scores reflect only a sample of students statewide; whereas the state’s standards-based assessment, given to all students, presents a more comprehensive view – and a different impression.

A summary of 2011 Adequate Yearly Progress (AYP) data provided by PED show that math and reading are of equal concern when academic proficiency of New Mexico students is examined. These data reveal that:

- 42 percent of New Mexico students are at or above proficiency in math;
- 50 percent of New Mexico students are at or above proficiency in reading;
- 53 percent of New Mexico third-graders are at or above grade level in reading;
- 52 percent of New Mexico third-graders are at or above grade level in math;
- 47 percent of New Mexico fourth-graders are at or above grade level in reading; and
- 44 percent of New Mexico fourth-graders are at or above grade level in math.

Promotion and Retention

According to the Education Commission of the States, 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.

The March 2004 report by the Consortium on Chicago School Research, *Ending Social Promotion: The Effects of Retention*, addresses the question whether retaining low-achieving students helps. "The answer to this question," the report says, "is definitely no. In the third grade, there is no evidence that retention led to greater achievement growth two years after the promotional gate, and in sixth grade, we find significant evidence that retention was associated with lower achievement growth." This study is based on the retention practices of Chicago Public Schools between 1996 and 2004, when between 7,000 and 10,000 third, sixth, and eighth grade students were retained.

Background:

In considering the issue of social promotion, the Legislative Education Study Committee heard testimony and research reports indicating that neither social promotion nor retention alone is likely to be effective. According to the US Department of Education (USDE), "the results of both policies are unacceptably high dropout rates, especially for poor and minority students, and inadequate knowledge and skills for students." Instead, researchers agree that, whether retained

or promoted, students not mastering the material at a given grade level must be identified early and receive additional help – tutoring, extended classes, transitional classes, intensive reading instruction, alternative programs, summer school – if they are to achieve at the required level.

Under current law, a student in grades 1 through 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.

Related Bills:

H 53 *Limit School Retentions through Remediation* (Identical to CS/CS/SB 50a)

CS/CS/SB 50a *Limit School Retentions through Remediation* (Identical to HB 53)

SB 96aa *Limit School Retentions through Interventions* (Identical)