

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** CS/HB 93

**51st Legislature, 2nd Session, 2014**

**Tracking Number:** .196828.4

**Short Title:** Academic Success Through Remediation Act

**Sponsor(s):** Representative Mary Helen Garcia and Senator Mary Kay Papen

**Analyst:** LaNysha Adams

**Date:** February 17, 2014 (Revised)

---

**HOUSE EDUCATION COMMITTEE SUBSTITUTE  
FOR HOUSE BILL 93**

**Bill Summary:**

Focusing on students in grades K-8, CS/HB 93 repeals the current remediation and promotion provisions in the *Assessment and Accountability Act* in the *Public School Code* and adds a new section to create the *Academic Success Through Remediation Act*.

A section-by-section synopsis follows:

**Section 1** names the new section the *Academic Success Through Remediation Act*.

**Section 2** defines the purpose of the *Academic Success Through Remediation Act* to ensure that students who experience difficulties learning to read are provided multiple opportunities for early intervention and remediation from grades K-3 and beyond.

**Section 3** defines a number of key terms:

- **“academic proficiency”** means a student’s academic performance on grade level as measured by grades, standardized assessment results, emotional and social development, and other measures identified by the school district;
- **“deficient in reading”** means a score range on the screening assessment determined by the Public Education Department (PED);
- **“educational plan for student success”** means a student-centered tool developed to define the role of an academic improvement plan within the public school and school district that:
  - includes a specific focus on early literacy and reading intervention in elementary schools that address methods to improve student learning and success in school; and
  - identifies specific measures of a student’s progress in academics;
- **“intensive targeted instruction”** means extra instruction in either small groups or as individuals;
- **“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 (RtI)<sup>1</sup> as defined in Section 22-13-6, Special education; definitions, NMSA 1978 and PED 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, which may include, if appropriate, retention in grades kindergarten, 1, and 2, 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;
- **“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, reading fluency, vocabulary, and comprehension approved by PED;
- **“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 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.

#### **Section 4 [Grade Promotions, Intervention, Remediation Programs, Retention Policies, Restrictions]**

Other provisions of CS/HB 93 require that public schools:

- use data from school year 2014-2015 to establish baseline assessment data on reading proficiency for students in grades K-3, which includes levels of performance in reading based on the screening assessment to determine when a student must be provided with an intervention and remediation program;
  - the baseline assessment data must include levels of performance in reading based on the screening assessment to determine when a student must be provided with an intervention and remediation programs;

---

<sup>1</sup> In PED rule, RtI is also called the “three-tier model of student intervention” and is a multi-tiered organizational framework that uses a set of intensive academic or behavioral supports, matched to student need, as a system for making educational programming and eligibility decisions.

- have their school boards approve programs while PED bears the cost of intervention, remediation programs, and reading improvement programs that have demonstrated effectiveness to provide special instructional assistance to students in grades K-3 who do not demonstrate reading proficiency, effective beginning with school year 2015-2016;
  - adopt and align intervention and remediation programs, reading improvement programs, and promotion policies with the screening assessment results and the Common Core State Standards; and
  - provide the screening assessment in the student's first and second languages for English language learners, if appropriate.

If students are deficient in reading, reading improvement plans must be implemented for students in grades K-3 as follows:

- no later than the end of the first nine weeks of the school year, school districts must administer the screening assessment to students enrolled in grades K-3. The assessment must screen students for reading skills as defined in this section; and
- if the screening assessment results for students in grades K-3 indicate that a student is deficient in reading, the student assistance team must develop a reading improvement plan in the appropriate home language for the student that clearly delineates:
  - the student's reading deficiencies; and
  - intervention and remediation programs included in the reading improvement plan, including the specific strategies for a parent to use in helping the student achieve reading proficiency.

If a parent refuses to allow the student to participate in any prescribed intervention, the school district must provide an appropriate form that must be signed by the parent that clearly indicates the parent's refusal to allow the student to participate in the prescribed intervention.

Beginning with school year 2014-2015, school districts:

- must notify the parents of students in grades K-3 who are deficient in reading at the end of the first grading period that the students must be provided with intensive targeted instruction; and
- may retain students, who are deficient in reading at the ends of grades K-2, pursuant to an established reading improvement plan.

Beginning with school year 2015-2016, the following promotion and retention decisions must be made if at the end of third grade a student is:

- academically proficient, the student shall enter the next highest grade;
- deficient in reading, the student shall participate in the required level of remediation before the beginning of the student's next school year; however, upon certification by the school district that the student has achieved reading proficiency, the student shall enter the next highest grade; or
- deficient in reading after completion of the prescribed intervention and remediation program and upon recommendation of the student assistance team, the student may be retained in the same grade so that the student may become academically proficient.

In order to determine whether a student should be retained, the student assistance team must, at minimum, consider:

- if the student is deficient in reading;
- the student's participation in all required intervention and remediation as prescribed by the school district in the reading improvement plan;
- the student's parental engagement in the reading improvement plan throughout the academic year;
- whether the student was habitually truant<sup>2</sup> during the academic year;
- the student's social and emotional development levels; and
- the parent's agreement to sign a contract that outlines a reading intervention program for the next grade.

If the student is not retained, the student assistance team must develop a reading improvement plan for immediate implementation at the beginning of the student's next school year.

For students in grades 4-8, CS/HB 93 requires that public schools:

- align intervention and remediation programs, reading improvement programs, and promotion policies with school-district-approved, valid and reliable assessment results, and with state standards;
- notify parents in writing no later than the end of the second grading period of each school year in grades 4-8 that their students are not academically proficient and that a conference with the student assessment team must be held to discuss strategies, including intervention and remediation programs available to assist the student in becoming academically proficient;
- present the student's academic deficiencies and available strategies, intervention, and remediation programs to parents orally and in writing;
- develop a reading improvement plan for students who are not academically proficient that contains timelines, academic expectations, and the measurements that will be used to verify that a student has overcome academic deficiencies;
- provide the parent of a student who is not academically deficient with specific strategies to use in helping the student achieve reading proficiency; and
- immediately implement the intervention, remediation programs, and reading improvement plans for students who are not proficient in reading.

Regarding promotion and retention decisions, if at the end of grades 4-8, a student:

- is academically proficient, the student shall enter the next highest grade;
- is not academically proficient, the student must participate in the required level of remediation with an academic proficiency plan that:
  - must be developed by the student assistance team;
  - must be designed to address specific academic deficiencies, including timelines and monitoring activities; and
  - must be implemented immediately.

---

<sup>2</sup> In the *Compulsory School Attendance Law*, habitual truancy means a student who has accumulated the equivalent of ten days or more of unexcused absences within a school year.

School districts must also:

- include percentages of academically proficient students listed by school and charter school in its annual accountability report required in Section 22-2C-11 [Assessment and accountability system reporting; parent survey; data system; fiscal information] NMSA 1978;
- use the screening assessment for students in grades K-2 to assess their growth in reading and other academic subjects;
- use the screening assessment and the statewide Standards-based Assessment for students in grades K-3 to assess their growth in reading and other academic subjects;
- refer students in grades 1-8, who are not academically proficient for two successive school years, to the student assistance team for placement in an alternative program designed by the school district that must be implemented immediately and filed with PED; and
- make promotion and retention decisions affecting a student enrolled in special education in accordance with the provisions of the individualized education program (IEP) established for that student.

CS/HB 93 further requires public school districts to exempt a student from retention if the student:

- scores at least at the 50<sup>th</sup> percentile on a PED-approved, norm-referenced test, or at the proficient level on an alternative school-district-approved, criterion-referenced assessment;
- demonstrates mastery on a teacher-developed portfolio that is equal to at least a proficient performance on the Standards-based Assessment;
- shows sufficient academic growth by meeting PED-specified levels of academic proficiency;
- is an English language learner who:
  - demonstrates proficiency in a language other than English on a valid and reliable reading assessment; or
  - has had less than two years of instruction in English for speakers of other languages;
- is a student with a disability who must be assessed, promoted, or retained according to the provisions established in the student's IEP; and
- is a student who has already been retained once in kindergarten, first, or second grade.

Finally, **Section 5** repeals Section 22-2C-6 [Remediation program; promotion policies; restrictions] NMSA 1978.

**Fiscal Impact:**

CS/HB 93 does not contain an appropriation.

## **Fiscal Issues:**

According to the Legislative Finance Committee's Fiscal Impact Report (FIR) for CS/HB 93:

- PED has not provided any estimate of potential costs, or savings, including the number of children that could potentially be affected by the proposed changes or estimates of fiscal impact to school districts to implement effective interventions and remediation;
- the changes proposed may significantly affect school district and charter school operating budgets; and
- in addition to the cost of educating a student for an additional year, school district and charter schools can be expected to have increased costs associated with remediation programs, including summer and after-school remediation programs, professional development for underperforming teachers, assessments, curriculum, student assistance teams, and additional third grade classrooms and teachers needed.

For FY 15, CS/HB 2 et al., the *General Appropriations Act of 2014*, includes a \$14.5 million appropriation for the Public School Reading Proficiency Fund for early reading initiatives.

## **Substantive Issues:**

Of the 76,117 students tested on Standards-based Assessment in grades 3-5 in 2013, approximately:

- 55.2 percent of all third graders statewide;
- 45.7 percent of all fourth graders statewide; and
- 51.2 percent of all fifth graders statewide are at or above proficiency in reading.

The data from the 2013 National Assessment of Educational Progress (NAEP), the only assessment that provides comparable data among the states and is known as the *Nation's Report Card*, show little to no improvement in fourth grade reading proficiency for New Mexico:

- just 21 percent of fourth graders tested proficient or better in reading;
- this performance was not statistically different from that in 2011 (21 percent) and in 1992 (23 percent); and
- the average NAEP score of fourth graders in reading was 206, lower than the average score of 221 for fourth graders nationwide.

## **Background:**

### ***Current Law***

In 2000, the Legislative Education Study Committee (LESC) endorsed legislation that was enacted to address the problem of students not achieving at grade level but promoted to the next grade despite being unprepared – a practice known as “social promotion.” Under this law, which is still current:

- “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.

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

According to information given by PED staff to the LESC during the 2012 interim, the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) Next:

- is the tool selected for the state's K-3 reading screening assessment;
- replaces the current version of DIBELS and includes a series of research-based enhancements that increase the ease of use as well as the reliability and validity of the assessment;
- was used by 40 districts and 10 charter schools during school year 2012-2013;
- produces results that can be linked to targeted interventions from core reading programs such as *Treasures*, *Trophies*, and *Reading Street*; and
- offers an electronic version called mCLASS® that is administered on a mobile device and provides:
  - frequent progress monitoring;
  - instructional tools for teachers; and
  - reporting capabilities for teachers and administrators.

According to the analysis by PED of CS/HB 93:

- in school year 2013-2014, 74,000 students participated in the DIBELS Next assessment, an increase of 32,000 students from school year 2012-2013; and
- 85 out of 89 school districts currently use the universal screening assessment in grades K-3 as part of the New Mexico Reads to Lead K-3 Early Reading Initiative.

According to the *DIBELS Next Assessment Manual*, DIBELS Next comprises six measures used to assess early literacy and reading skills for students from kindergarten through sixth grade and can be used to:

- identify students who may be at risk for reading difficulties;
- help teachers identify areas to target instructional support;
- monitor at-risk students while they receive additional, targeted instruction; and
- examine the effectiveness of a school's system of instructional supports.

### ***Related Research***

*Passing on Failure: District Promotion Policies and Practices*, a national survey, conducted in 1997, concluded that “neither social promotion nor retention is an adequate response to student underachievement.” The study suggested that school districts establish performance standards for each grade level and institute policies that prevent early school failure, such as all-day kindergarten, class-size reduction, and assuring that at-risk students have excellent reading instruction in the early grades. Other conclusions included extending time for instruction, attracting and retaining the best teachers, and providing teachers with opportunities to learn how to teach students to read.

According to findings from *Double Jeopardy: How Poverty and Third Grade Reading Skills Influence High School Graduation*, a report published by the Annie E. Casey Foundation in 2012, one in six children who are not reading proficiently in third grade do not graduate from high school on time, a rate four times greater than that for proficient readers.

### **Committee Referrals:**

HEC/HAFC

### **Related Bills:**

SB 45 *Academic Success Through Remediation Act* (Identical)

SB 255 *Early Childhood Reading Literacy Program*

SB 297 *K-8 Intervention & Remediation*

SB 326 *Reading Success Act*