

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 21 & 100

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO EDUCATION; LIMITING GRADE PROMOTIONS; MAKING
EXCEPTIONS; PROVIDING FOR REMEDIATION AND INTENSIVE
INTERVENTIONS; PROVIDING THAT A STUDENT WHO IS NOT PROFICIENT
IN READING AT THE END OF GRADE THREE MAY NOT BE PROMOTED TO
GRADE FOUR; PROVIDING THAT A STUDENT MAY BE HELD BACK ONLY
ONCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-2C-6 NMSA 1978 (being Laws 1986,
Chapter 33, Section 7, as amended) is repealed and a new
Section 22-2C-6 NMSA 1978 is enacted to read:

"22-2C-6. [NEW MATERIAL] GRADE PROMOTIONS--REMEDICATION
PROGRAMS--PROMOTION POLICIES--RESTRICTIONS.--

A. As used in this section:

(1) "academic improvement plan" means a

1 written document developed by the student assistance team that
2 describes the specific content standards required for a certain
3 grade level that a student has not achieved and that prescribes
4 specific intervention and remediation programs such as summer
5 school, extended day or week school and tutoring, that address
6 the student's learning style;

7 (2) "educational plan for student success"
8 means a student-centered tool developed to define the role of
9 the academic improvement plan within the public school and the
10 school district that addresses methods to improve student
11 learning and success in school and that identifies specific
12 measures of a student's progress;

13 (3) "local school board" includes the
14 governing authority of a charter school;

15 (4) "reading proficiency" means a score on the
16 New Mexico standards-based assessment higher than the lowest
17 level established by the department;

18 (5) "school district" includes a charter
19 school;

20 (6) "school-district-determined assessments"
21 means student assessments developed or adopted by a local
22 school board; and

23 (7) "student assistance team" means a group
24 consisting of a student's:

25 (a) teacher;

- 1 (b) school counselor;
2 (c) school administrator;
3 (d) parent; and
4 (e) a student advocate chosen by the
5 student or parent.

6 B. Remediation programs and promotion policies
7 shall be aligned with the results from statewide standards-
8 based assessments and school-district-determined assessments.

9 C. School districts shall use the statewide
10 standards-based assessments in grades three through eight and
11 school-district-determined assessments in kindergarten through
12 grade two to assess and evaluate each student's growth in
13 reading ability and other academic achievement. The local
14 school board shall approve school district-developed
15 remediation programs to provide intensive instructional
16 assistance to students in kindergarten through grade eight who
17 do not demonstrate academic proficiency. Remediation programs
18 shall be incorporated into the school district's educational
19 plan for student success and submitted to and approved by the
20 department.

21 D. In kindergarten through grade eight, the cost of
22 remediation programs shall be borne by the school district.
23 The cost of summer and extended day remediation programs
24 offered in grades nine through twelve shall be borne by the
25 parent; however, when parents are determined to be indigent

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1 according to guidelines established by the department, the
2 school district shall bear those costs. Beginning with the
3 2013-2014 school year, depending on the availability of funds,
4 the school district shall bear the cost of summer and extended
5 day remediation programs offered in grades nine through twelve.

6 E. A student's academic achievement shall serve as
7 a criterion in assessing the need for remediation or retention.
8 Classroom-based formative assessments and student work shall be
9 considered when determining remediation and retention. A
10 student evaluated and found to have a substantial deficiency
11 that would preclude progress in academic achievement shall be
12 provided with remedial and intensive instruction at each grade
13 level until the student achieves academic proficiency or
14 completes high school.

15 F. A parent shall first be notified in writing no
16 later than the end of the second grading period that the
17 parent's student is not academically proficient, and a
18 conference consisting of the parent, a student advocate chosen
19 by the student or parent and the teacher shall be held to
20 discuss strategies, including remediation programs, available
21 to assist the student in becoming academically proficient. The
22 student's specific academic deficiencies and available
23 strategies to correct those deficiencies shall be explained to
24 the student's parent and a written academic improvement plan
25 shall be developed that contains time lines, academic

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1 expectations and measurements to be used to verify that the
2 student is overcoming academic deficiencies. The parent shall
3 be provided with specific strategies to use in helping the
4 child achieve academic proficiency. Remediation programs and
5 academic improvement plans include response to intervention as
6 defined in Section 22-13-6 NMSA 1978 and further defined in
7 department guidelines, tutoring, extended day or week programs,
8 summer programs and other research-based interventions and
9 models for student improvement. The academic improvement plan
10 shall be implemented immediately.

11 G. Using data from the 2010-2011 and 2011-2012
12 school years, each public school shall establish baseline
13 assessment data on reading proficiency for students in grades
14 three, five and eight. The baseline data shall include levels
15 of performance in reading based on performance on statewide
16 standards-based assessments below which a student must receive
17 remediation or be retained in an intensive program that is
18 different from the previous year's program.

19 H. At the beginning of and throughout kindergarten
20 and the first through third grades, each student shall be
21 evaluated to determine the extent of the student's reading
22 ability. The evaluation shall measure phonemic awareness,
23 phonics, fluency, vocabulary and comprehension. If the student
24 is deemed deficient in reading, the student assistance team
25 shall immediately develop an academic improvement plan for the

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1 student that clearly delineates the student's reading
2 deficiencies and remediation strategies to be included in the
3 plan, including the specific strategies for the parent to use
4 in helping the child achieve reading proficiency.

5 I. Beginning with the 2012-2013 school year, the
6 parent of a third grade student who is deficient in reading at
7 the end of the first grading period must receive notice that
8 the student is in danger of being retained at the end of third
9 grade if the student does not achieve reading proficiency by
10 that time and that a parental waiver will not be allowed for
11 the student. A student who receives remediation or other
12 appropriate interventions based on the student's academic
13 improvement plan and who is not reading proficiently by the end
14 of third grade as measured by the statewide standards-based
15 assessment shall be retained in the third grade for no more
16 than one year, unless the student is exempt from mandatory
17 retention as provided in Subsection M of this section. A
18 student shall have an opportunity at the end of the summer
19 immediately preceding fourth grade to demonstrate reading
20 proficiency on a criterion-referenced school-district-
21 determined assessment approved by the department and be
22 promoted to the fourth grade. A student who is retained must
23 be provided with regular diagnostic and other evaluations to
24 determine the nature of the student's reading deficiency and to
25 measure progress in achieving reading proficiency and must

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1 receive an intensive program that is different from the
2 previous year's program.

3 J. At the end of kindergarten through grade seven,
4 three options are available, dependent on a student's academic
5 proficiency:

6 (1) the student is academically proficient and
7 shall enter the next higher grade;

8 (2) the student is not academically proficient
9 and shall participate in the required level of remediation.

10 Upon certification by the school district that the student is
11 academically proficient, the student shall enter the next
12 higher grade; or

13 (3) the student is not academically proficient
14 after completion of the prescribed remediation program and,
15 upon the recommendation of the teacher and school principal,
16 shall either be:

17 (a) retained in the same grade for no
18 more than one school year with an academic improvement plan
19 developed by the student assistance team to assist the student
20 in becoming academically proficient, at which time the student
21 shall enter the next higher grade; or

22 (b) except as provided in Subsection I
23 of this section, promoted to the next grade if the parent
24 refuses to allow the child to be retained, in which case the
25 parent shall sign a waiver indicating the parent's desire that

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1 the student be promoted to the next higher grade with an
2 academic improvement plan designed to address specific academic
3 deficiencies. The academic improvement plan shall be developed
4 by the student assistance team outlining time lines and
5 monitoring activities to ensure progress toward overcoming
6 those academic deficiencies. Students who have been evaluated
7 to determine the nature of their academic deficiencies and who
8 have received an intensive program that is different from the
9 previous year's program but who fail to become academically
10 proficient at the end of that year, shall be retained in the
11 same grade for no more than one year in order to have
12 additional time to achieve academic proficiency unless exempt
13 from mandatory retention as prescribed in Subsection M of this
14 section. The academic improvement plan shall be implemented
15 immediately.

16 K. A student who does not demonstrate academic
17 proficiency for two successive school years shall be referred
18 to the student assistance team for placement in an alternative
19 program designed by the school district. Alternative program
20 plans shall be submitted to and approved by the department.

21 L. The school principal of a public school that
22 includes any of grades three through eight shall establish
23 procedures to ensure that an academic improvement plan is
24 implemented for each student who requires one and that each
25 plan includes a description of the student's reading

1 deficiencies, the results obtained from statewide standards-
 2 based assessments and the reading strategies used for remedial
 3 and intensive instruction.

4 M. A student shall be exempt from the provisions of
 5 Subsections I and J of this section if the student:

6 (1) scores at least at the fiftieth percentile
 7 on an alternative department-approved norm-referenced
 8 assessment or at the proficient level on an alternative
 9 department-approved criterion-referenced assessment;

10 (2) demonstrates mastery on a
 11 teacher-developed portfolio that is equal to at least a
 12 proficient performance on the statewide standards-based
 13 assessments;

14 (3) shows sufficient academic growth by
 15 meeting acceptable levels of reading and literacy performance
 16 specified by the department;

17 (4) is an English language learner who reads
 18 proficiently in a language other than English on a valid and
 19 reliable reading assessment in that language or who has had
 20 less than two years of instruction in English for speakers of
 21 other languages; or

22 (5) is a student with a disability, who shall
 23 be assessed, promoted or retained in accordance with the
 24 provisions of the student's individualized education program."

25 SECTION 2. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2011.

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