

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 23

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

INTRODUCED BY

John Arthur Smith and Nora Espinoza

AN ACT

RELATING TO PUBLIC SCHOOLS; LIMITING GRADE PROMOTIONS BY PROVIDING THAT A STUDENT WHO IS NOT PROFICIENT IN READING AT THE END OF THE THIRD GRADE WILL BE RETAINED IN THE THIRD GRADE FOR ONE YEAR AND PROVIDING FOR ASSESSMENT, REMEDIATION PROGRAMS AND INTERVENTION TO ADDRESS DEFICIENCIES IDENTIFIED BETWEEN KINDERGARTEN AND THE THIRD GRADE; REPEALING AND REENACTING A SECTION OF THE NMSA 1978; DECLARING AN EMERGENCY.

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 Section 22-2C-6 NMSA 1978 (being Laws 1986, Chapter 33, Section 7, as amended) is repealed and a new Section 22-2C-6 NMSA 1978 is enacted to read: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

.187387.2SA

underscoring material = new
~~[bracketed material] = delete~~

1 (1) "academic improvement plan" means a
2 written document developed by the student assistance team that
3 describes the specific content standards required for a certain
4 grade level that a student has not achieved and that prescribes
5 specific intervention and remediation programs;

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

12 (3) "reading proficiency" means a score on the
13 New Mexico standards-based assessment higher than the lowest
14 level established by the department;

15 (4) "remediation program" includes summer
16 school, extended day or week programs, small group instruction,
17 tutoring, progress monitoring and other research-based
18 interventions and models for student improvement and, if
19 applicable, responses to intervention as defined in Section
20 22-13-6 NMSA 1978 and department guidelines; and

21 (5) "student assistance team" means a group
22 consisting of a student's:

- 23 (a) teacher;
24 (b) school counselor;
25 (c) school administrator; and

underscoring material = new
~~[bracketed material] = delete~~

1 (d) parent, or if no parent is
2 available, a student advocate chosen by the student or parent.

3 B. Department-approved screening assessments for
4 reading skills shall be given and, if necessary, academic
5 improvement plans shall be implemented for public school
6 students in kindergarten through grade three as follows:

7 (1) the department shall approve one screening
8 assessment to screen, at the beginning of the school year,
9 students enrolled in kindergarten for reading skills, including
10 phonological awareness, letter recognition and oral language
11 skills;

12 (2) the department shall approve up to three
13 screening assessments to screen, at the beginning of the school
14 year, each student enrolled in first, second and third grade to
15 measure the acquisition of reading skills, including
16 phonological awareness, phonics, spelling, reading fluency,
17 vocabulary and comprehension; and

18 (3) after the screening assessment, if the
19 student is deemed deficient in reading, the student assistance
20 team shall immediately develop an academic improvement plan for
21 the student that clearly delineates the student's reading
22 deficiencies and remediation programs to be included in the
23 plan, including the specific strategies for a parent to use in
24 helping the child achieve reading proficiency.

25 C. School districts, locally chartered charter

.187387.2SA

underscoring material = new
~~[bracketed material] = delete~~

1 schools and state-chartered charter schools shall use the
2 statewide standards-based assessments in grades three through
3 eight to assess and evaluate each student's growth in reading
4 ability and other academic achievement.

5 D. The local school board shall approve school
6 district-selected, proven remediation programs and the
7 governing authority of a charter school shall approve charter
8 school-selected, proven remediation programs to provide
9 intensive instructional assistance to students in kindergarten
10 through grade eight who do not demonstrate academic
11 proficiency. Remediation programs shall be incorporated into
12 the educational plans for student success of school districts,
13 locally chartered charter schools and state-chartered charter
14 schools and shall be submitted to and approved by the
15 department. Remediation programs and grade promotion policies
16 shall be aligned with the results from statewide standards-
17 based assessments and department-approved screening
18 assessments.

19 E. In kindergarten through grade eight, the cost of
20 remediation programs shall be borne by the school district,
21 locally chartered charter school and state-chartered charter
22 school. The cost of summer and extended day remediation
23 programs offered in grades nine through twelve shall be borne
24 by the parent; however, when parents are determined to be
25 indigent according to guidelines established by the department,

.187387.2SA

underscored material = new
~~[bracketed material] = delete~~

1 the school district, locally chartered charter school and
2 state-chartered charter school shall bear those costs.
3 Beginning with the 2013-2014 school year, depending on the
4 availability of funds, the school district, locally chartered
5 charter school and state-chartered charter school shall bear
6 the cost of summer and extended day remediation programs
7 offered in grades nine through twelve.

8 F. A parent shall be notified in writing no later
9 than the end of the second grading period of each school year
10 that the parent's student is not academically proficient, and a
11 conference consisting of the parent, or if no parent is
12 available, a student advocate chosen by the student or parent,
13 and the teacher shall be held to discuss strategies, including
14 remediation programs, available to assist the student in
15 becoming academically proficient. The student's specific
16 academic deficiencies and the available strategies to correct
17 those deficiencies shall be explained to the student's parent
18 and a written academic improvement plan shall be developed that
19 contains time lines, academic expectations and measurements to
20 be used to verify that the student is overcoming academic
21 deficiencies. The parent shall be provided with specific
22 strategies to use in helping the child achieve academic
23 proficiency. The remediation programs and academic improvement
24 plan shall be implemented immediately.

25 G. Using data from the 2010-2011 through 2012-2013

.187387.2SA

underscoring material = new
~~[bracketed material] = delete~~

1 school years, each public school shall establish baseline
2 assessment data on reading proficiency for students in grades
3 three, five and eight. The baseline data shall include levels
4 of performance in reading based on performance on statewide
5 standards-based assessments below which a student must be
6 provided with a remediation program or be retained in an
7 intensive program that is different from the previous year's
8 program.

9 H. Beginning with the 2013-2014 school year, the
10 parent of a third grade student who is deficient in reading at
11 the end of the first grading period shall be given notice that
12 the student is in danger of being retained at the end of third
13 grade if the student does not achieve reading proficiency by
14 that time and that a parental waiver will not be allowed for
15 the student. A student who receives a remediation program or
16 other appropriate interventions based on the student's academic
17 improvement plan and who is not reading proficiently by the end
18 of third grade as measured by the statewide standards-based
19 assessment shall be retained in the third grade for no more
20 than one year, unless the student is exempt from mandatory
21 retention as provided in Subsection L of this section. A
22 student shall have an opportunity at the end of the summer
23 immediately following third grade to demonstrate reading
24 proficiency on a department-approved screening assessment and
25 be promoted to the fourth grade. A student who is retained

.187387.2SA

1 must be provided with regular diagnostic and other evaluations
2 to determine the nature of the student's reading deficiency and
3 to measure progress in achieving reading proficiency and must
4 be provided with a remediation program that is different from
5 the previous year's program.

6 I. For students in first grade through grade seven,
7 grade promotion and retention decisions at the end of the
8 school year shall be based on a student's academic proficiency,
9 as defined in Section 22-1-2 NMSA 1978, as follows:

10 (1) the student is academically proficient and
11 shall enter the next higher grade;

12 (2) the student is not academically proficient
13 and shall participate in the required level of remediation in
14 summer school. Upon certification by the school district that
15 the student is academically proficient, the student shall enter
16 the next higher grade; or

17 (3) the student is not academically proficient
18 after completion of the prescribed remediation program and,
19 upon the recommendation of the teacher and school principal,
20 shall be either:

21 (a) retained in the same grade for no
22 more than one school year with an academic improvement plan
23 developed by the student assistance team to assist the student
24 in becoming academically proficient and in demonstrating that
25 the student is a successful and independent reader, is reading

underscored material = new
~~[bracketed material] = delete~~

1 at or above the student's grade level and is ready to be
2 promoted to the next higher grade. Tools that school districts
3 may use in evaluating any retained student include subsequent
4 assessments, alternative assessments and portfolio reviews as
5 approved by the department. A decision to promote a retained
6 student to the next higher grade may be made either at the end
7 of the school year or midyear, but a midyear promotion shall be
8 made only upon agreement of the parent or guardian of the
9 student and the school principal; or

10 (b) unless the student is in third grade
11 and is subject to the provisions of Subsection H of this
12 section, promoted to the next grade if the parent refuses to
13 allow the student to be retained and signs a waiver indicating
14 the parent's desire that the student be promoted to the next
15 higher grade with an academic improvement plan designed to
16 address specific academic deficiencies. The academic
17 improvement plan shall be developed by the student assistance
18 team outlining time lines and monitoring activities to ensure
19 progress toward overcoming those academic deficiencies.

20 Students who have been evaluated to determine the nature of
21 their academic deficiencies and who have received a remediation
22 program that is different from the previous year's program but
23 who fail to become academically proficient at the end of that
24 year shall be retained in the same grade for no more than one
25 year in order to have additional time to achieve academic

.187387.2SA

underscoring material = new
~~[bracketed material] = delete~~

1 proficiency unless exempt from mandatory retention as
2 prescribed in Subsection L of this section. The academic
3 improvement plan shall be implemented immediately.

4 J. A student who does not demonstrate academic
5 proficiency for two successive school years shall be referred
6 to the student assistance team for placement in an alternative
7 program designed by the school district. Alternative program
8 plans shall be submitted to and approved by the department.

9 K. The school principal of a public school that
10 includes any of grades kindergarten through eight shall
11 establish procedures to ensure that an academic improvement
12 plan is implemented for each student who requires one and that
13 each plan includes a description of the student's reading
14 deficiencies, the results obtained from statewide standards-
15 based assessments and the reading strategies used for remedial
16 and intensive instruction.

17 L. A student shall be exempt from the provisions of
18 Subsections H and I of this section if the student:

19 (1) scores at least at the fiftieth percentile
20 on an alternative department-approved norm-referenced
21 standardized assessment or at the proficient level on an
22 alternative department-approved criterion-referenced
23 standardized assessment;

24 (2) demonstrates mastery on a teacher-
25 developed portfolio that is equal to at least a proficient

underscoring material = new
~~[bracketed material] = delete~~

1 performance on the statewide standards-based assessments;

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

5 (4) is an English language learner who reads
6 proficiently in a language other than English on a valid and
7 reliable reading assessment in that language or who has had
8 less than two years of instruction in English for speakers of
9 other languages; or

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

13 SECTION 2. EMERGENCY.--It is necessary for the public
14 peace, health and safety that this act take effect immediately.