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HOUSE BILL 69

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Mary Helen Garcia

AN ACT

RELATING TO PUBLIC SCHOOLS; LIMITING GRADE PROMOTIONS BY PROVIDING THAT A STUDENT WHO IS NOT PROFICIENT IN READING AT THE END OF KINDERGARTEN OR FIRST OR SECOND GRADE MAY BE RETAINED AND SHALL BE PROVIDED WITH INTENSIVE REMEDIATION; PROVIDING THAT A STUDENT WHO IS NOT PROFICIENT IN READING AT THE END OF THIRD GRADE SHALL BE RETAINED AND PROVIDED WITH INTENSIVE REMEDIATION; PROVIDING THAT A STUDENT WHO IS NOT ACADEMICALLY PROFICIENT AT THE END OF GRADES FOUR THROUGH EIGHT SHALL NOT BE RETAINED BUT SHALL BE PROVIDED WITH INTENSIVE REMEDIATION; PROVIDING FOR ASSESSMENT, INTERVENTION AND REMEDIATION PROGRAMS TO ADDRESS DEFICIENCIES IDENTIFIED BETWEEN KINDERGARTEN AND THE EIGHTH GRADE; MAKING EXCEPTIONS; REPEALING AND ENACTING A SECTION OF THE NMSA 1978.

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

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2 Chapter 33, Section 7, as amended) is repealed and a new  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

4           "22-2C-6. [NEW MATERIAL] GRADE PROMOTIONS--INTERVENTION--  
5 REMEDIATION PROGRAMS--RETENTION POLICIES--RESTRICTIONS.--

6           A. As used in this section:

7                   (1) "educational plan for student success"  
8 means a student-centered tool developed to define the role of  
9 the reading 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 in reading;

13                   (2) "intensive targeted instruction" means  
14 extra instruction in either small groups or as individuals that  
15 shall be no less than twenty minutes per day and five days per  
16 week or the equivalent;

17                   (3) "intervention" means targeted  
18 instructional practice for individual students or small groups  
19 of students aligned with the results of a valid and reliable  
20 assessment and, if applicable, response to intervention as  
21 defined in Section 22-13-6 NMSA 1978 and department rule;

22                   (4) "reading improvement plan" means a written  
23 document developed by the student assistance team that  
24 describes the specific reading standards required for a certain  
25 grade level that a student has not achieved and that prescribes

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1 specific remediation programs that have demonstrated  
2 effectiveness and can be implemented during the intensive  
3 targeted instruction within the school day or during summer  
4 school or extended day or week programs and with tutoring;

5 (5) "reading proficiency" means a score on the  
6 statewide standards-based assessment that is higher than the  
7 lowest level established by the department;

8 (6) "remediation programs" includes summer  
9 school, extended day or week programs, tutoring, progress-based  
10 monitoring and other research-based models for student  
11 improvement;

12 (7) "school district" includes both a public  
13 school district and a locally chartered or state-chartered  
14 charter school;

15 (8) "screening assessment" means the  
16 assessment that measures the acquisition of reading skills,  
17 including but not limited to phonological awareness, phonics,  
18 spelling, reading fluency, vocabulary and comprehension  
19 approved and provided by the department;

20 (9) "student assistance team" means a group  
21 consisting of a student's:

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

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1 (e) if the student or parent wishes, a  
2 student advocate chosen by the student or parent; and

3 (10) "valid and reliable assessments" means  
4 assessments that:

5 (a) are appropriate to targeted  
6 populations;

7 (b) provide predictive values; and

8 (c) are thoroughly tested, peer-reviewed  
9 and accepted by authorities and practitioners in the field.

10 B. Using data from the 2012-2013 school year, each  
11 public school shall establish baseline assessment data on  
12 reading proficiency for students in kindergarten and grades one  
13 through three. The baseline assessment data shall include  
14 levels of performance in reading based on the screening  
15 assessment below which a student must be provided with an  
16 intervention and remediation program.

17 C. Effective with the beginning of the 2013-2014  
18 school year, local school districts shall approve and bear the  
19 cost of intervention and remediation programs and reading  
20 improvement programs that have demonstrated effectiveness to  
21 provide special instructional assistance to students in  
22 kindergarten through third grade who do not demonstrate reading  
23 proficiency. Beginning in kindergarten and through third  
24 grade, intervention and remediation programs, reading  
25 improvement programs and promotion policies shall be aligned

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1 with the screening assessment results and be aligned with state  
2 standards. The screening assessment shall be given, and, if  
3 students do not demonstrate reading proficiency, reading  
4 improvement plans shall be implemented for students in  
5 kindergarten through third grade as follows:

6 (1) at the beginning of the school year,  
7 school districts shall administer the screening assessment to  
8 students enrolled in kindergarten. The assessment shall screen  
9 students for reading skills, including, but not limited to,  
10 phonological awareness, letter recognition and oral language  
11 skills;

12 (2) at the beginning of the school year,  
13 school districts shall administer the screening assessment to  
14 students enrolled in first, second and third grades. The  
15 assessment shall measure the students' acquisition of reading  
16 skills, including, but not limited to, phonological awareness,  
17 phonics, spelling, reading fluency, vocabulary and  
18 comprehension; and

19 (3) if the screening assessment results  
20 indicate that the student is not proficient in reading, the  
21 student assistance team shall immediately develop a reading  
22 improvement plan for the student that clearly delineates the  
23 student's reading deficiencies and that clearly delineates  
24 intervention and remediation programs that shall be included in  
25 the plan, including the specific strategies for a parent to use

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1 in helping the child achieve reading proficiency.

2 D. Beginning with the 2012-2013 school year, the  
3 parent of a student who is in kindergarten or first, second or  
4 third grade and who is not proficient in reading at the end of  
5 the first grading period shall be given notice that the student  
6 shall be provided with intensive targeted instruction.

7 E. At the end of grade three, grade promotion and  
8 retention decisions for each student shall be based upon the  
9 determination that the student is:

10 (1) proficient in reading and shall enter the  
11 next highest grade;

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

17 (3) not proficient in reading after completion  
18 of the prescribed intervention and remediation program and upon  
19 the recommendation of the teacher and school principal shall be  
20 retained in the same grade with a reading improvement plan that  
21 is different from the prior year's reading improvement plan  
22 developed by the student assistance team so that the student  
23 may become proficient in reading. No student shall be retained  
24 for a total of more than one school year between kindergarten  
25 and grades one through three as a result of not having attained

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1 proficiency in reading.

2 F. In grades four through eight, intervention and  
3 remediation programs, reading improvement programs and  
4 promotion policies shall be aligned with school-district-  
5 approved, valid and reliable assessment results and be aligned  
6 with state standards.

7 G. A parent shall be notified in writing no later  
8 than the end of the second grading period of each school year  
9 in grades four through eight that the parent's student is not  
10 academically proficient, and a conference with the student  
11 assessment team shall be held to discuss strategies, including  
12 intervention and remediation programs available to assist the  
13 student in becoming academically proficient. The student's  
14 specific academic deficiencies and the available strategies and  
15 intervention and remediation programs shall be explained to the  
16 student's parent and a written intervention plan shall be  
17 developed that contains time lines, academic expectations and  
18 the measurements to be used to verify that a student has  
19 overcome academic deficiencies. The parent shall be provided  
20 with specific strategies to use in helping the student achieve  
21 reading proficiency. The intervention and remediation programs  
22 and reading improvement plan shall be implemented immediately.

23 H. At the end of grades four through eight, grade  
24 promotion decisions for each student shall be based upon the  
25 determination that the student is:

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1 (1) academically proficient and shall enter  
2 the next highest grade; or

3 (2) not academically proficient and shall  
4 participate in the required level of remediation. An academic  
5 proficiency plan shall be developed by the student assistance  
6 team outlining time lines and monitoring activities to ensure  
7 progress toward overcoming the student's academic deficiencies.  
8 Students who have been evaluated to determine the nature of  
9 their academic deficiencies and who have received an  
10 intervention and remediation program that is different from the  
11 previous year's program but fail to become academically  
12 proficient at the end of that year as measured by grades,  
13 performance on the screening assessment and other measures  
14 identified by the school district shall be provided with an  
15 alternate program that shall be implemented immediately. The  
16 school district shall include percentages of academically  
17 proficient students listed by school and charter school in its  
18 annual accountability report required in Section 22-2C-11 NMSA  
19 1978.

20 I. To assess each student's growth in reading and  
21 other academic subjects, in kindergarten through second grade,  
22 school districts shall use the screening assessment, and in  
23 grades three through eight, school districts shall use the  
24 statewide standards-based assessment.

25 J. The cost of summer school and extended day

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1 intervention and remediation programs offered in grades nine  
2 through twelve shall be borne by the parent; however, in cases  
3 in which parents are determined to be indigent according to  
4 guidelines established by the department, the school district  
5 shall bear those costs.

6 K. A student who does not demonstrate reading  
7 proficiency for two successive school years shall be referred  
8 to the student assistance team for placement in an alternative  
9 program designed by the school district. Alternative program  
10 plans shall be filed with the department.

11 L. Promotion and retention decisions affecting a  
12 student enrolled in special education shall be made in  
13 accordance with the provisions of the individual educational  
14 plan established for that student.

15 M. A student shall be exempt from the provisions of  
16 Subsection G of this section if the student:

17 (1) scores at least at the fiftieth percentile  
18 on a department-approved, norm-referenced assessment or at the  
19 proficient level on an alternative school-district-approved,  
20 criterion-referenced assessment;

21 (2) demonstrates mastery on a teacher-  
22 developed portfolio that is equal to at least a proficient  
23 performance on the statewide standards-based assessments;

24 (3) shows sufficient academic growth by  
25 meeting acceptable levels of academic performance specified by

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1 the department;

2 (4) is an English language learner who is  
3 proficient in a language other than English on a valid and  
4 reliable reading assessment or who has had less than two years  
5 of instruction in English for speakers of other languages;

6 (5) is a student with a disability who shall  
7 be assessed, promoted or retained in accordance with the  
8 provisions of the student's individualized education program;  
9 or

10 (6) is a student who has already been retained  
11 once in kindergarten or first or second grades."