

STATE OF NEW MEXICO
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November 13, 2013

MEMORANDUM

TO: Legislative Education Study Committee

FR: LaNysha Adams

**RE: STAFF REPORT: READING RETENTION & INTERVENTION:
BACKGROUND**

During interims since at least 2010, the Legislative Education Study Committee (LESC) discussed reading initiatives, particularly regarding issues related to retention and interventions provided to students to help prevent retention.

For the committee's review, this staff report includes background information on:

- 2013 legislative action;
- retention and academic proficiency data in New Mexico, including three tables summarizing reading and math proficiency in New Mexico disaggregated by grade level; and
- background summarizing:
 - provisions in current law;
 - research; and
 - related legislation.

This report also includes the following three attachments:

- **Attachment 1**, *Side-by-Side Comparison of Current Law & 2013 Senate Bills*;
- **Attachment 2**, *22-2C-6*; and
- **Attachment 3**, *Civil Rights Data Collection Retention Data*.

2013 LEGISLATIVE ACTION

During the 2013 legislative session, the following four bills and two memorials were introduced, but did not pass:

- HB 257, *Academic Success Through Remediation Act* — adds a new section of the *Public School Code* to create the *Academic Success Through Remediation Act*; provides that a student who is not proficient in reading at the end of kindergarten, or first or second grade, be provided with intensive remediation; provides that a student who is not proficient in reading at the end of third grade, with certain exceptions, be retained and provided with intensive remediation; provides that a student who is not academically proficient at the end of grades 4-8 not be retained but be provided with intensive remediation or an alternative program; provides for assessment, intervention, and remediation programs to address deficiencies identified between kindergarten and the eighth grade; and makes exceptions **[did not pass]**;
- HJM 37, *Reading Literacy of Indian Children* — requests that the Public Education Department (PED) establish a working relationship with the Save the Children Foundation (SCF) to ensure that reading literacy data for Native American children collected by SCF through the Indian Education Division's rural literacy initiative (RLI), PED's data collection system (STARS), and accelerated reader literacy programs administered through participating Native American schools by SCF, be aligned and compared with the literacy data collected for students participating in the RLI by PED **[did not pass]**;
- SB 260a, *Academic Success Through Remediation Act* — adds a new section of the *Public School Code* to create the *Academic Success Through Remediation Act*; provides that a student who is deficient in reading at the end of kindergarten or first or second grade be provided with intensive remediation; provides that a student who is deficient in reading at the end of third grade, with certain exceptions, be retained upon the recommendation of the school principal in consultation with the teacher and provided with intensive remediation; provides for assessment, intervention, and remediation programs to address deficiencies identified between kindergarten and eighth grade; and makes exceptions **[did not pass]**;
- SB 474, *School Intervention & Remediation Practices* — repeals and creates a section of the *Assessment and Accountability Act* to provide for improved intervention and remediation practices for kindergarten through grade 8 and top to bottom accountability; and appropriates \$67.8 million from the General Fund to the State Equalization Guarantee distribution for expenditure in FY 14 to fund reading and mathematics intervention teachers for students in kindergarten through grade 8 who are in need of intervention **[did not pass]**;
- SB 640, *Reading Proficiency Act* — adds and amends multiple sections of the *Public School Code* to create the *Reading Proficiency Act* to ensure multiple opportunities for intervention and remediation measures for students in kindergarten through grade 8 who do not demonstrate reading proficiency; requires baseline assessment data on reading proficiency for students in kindergarten through grade 3; provides intervention and differentiated remediation measures for students in kindergarten through grade 8 who do

not demonstrate reading proficiency; requires PED to report to the LESC in alternate months during the interim on the accountability reports received, programs adopted and implemented, data maintained, and goals established pursuant to the act; requires school districts to maintain student intervention files; aligns promotion and retention policies to valid and reliable assessment results; and appropriates \$11.0 million from the General Fund to the State Equalization Guarantee for expenditure in FY 14 to fund interventions and differentiated remediation for students pursuant to the *Reading Proficiency Act* and professional development for teachers' adoption of effective instructional methodologies and strategies in the areas of reading English language development or English as a second language **[did not pass]**; and

- SM 81, *Study 3rd Grade/College Student Mentoring* — requests that the Legislative Education Study Committee, in cooperation with PED and the Higher Education Department, establish a work group to conduct a study on the feasibility of establishing mentoring programs by college students to third graders who are at risk of not learning to read and report results of the study and make recommendations to the Legislature and Governor before the 2014 legislative session **[did not pass]**.

Attachment 1, *Side-by-Side Comparison of Current Law & 2013 Senate Bills*, provides a comparison of the senate bills most closely related to the topic of reading retention and intervention.

For the committee's review, the following data was included in bill analyses (for HB 257) during the 2013 legislative session:

- the Legislative Finance Committee's (LFC) Fiscal Impact Report (FIR) suggested that the Legislature may want to consider implementing a mandatory statewide K-3 Plus program in all high poverty schools as a cost-saving measure related to retention costs.

According to the FIR, for school year 2011-2012:

- there were 25,252 third graders enrolled in New Mexico schools;
 - of the 25,176 third graders tested on the statewide standards-based assessment in reading, 5,589 (22 percent) were at "beginning steps" and at risk of being retained; and
 - per student funding received by districts was approximately \$7,044 per student; and
- the PED bill analysis stated that:
 - approximately 41,973 students in grades K-8 will require intervention in reading;
 - districts will need additional funds to support schools with implementation of the screening assessment tool and interventions;
 - promotion and retention policies that are aligned with school district-approved valid and reliable assessments will not provide consistent data across districts resulting in inconsistent statewide promotion and retention policies;
 - the cost of remediation increases as students advance in grade levels; and
 - additional appropriations would need to be made for remediation and interventions.

RETENTION AND ACADEMIC PROFICIENCY DATA IN NEW MEXICO

According to retention data received from PED during the 2013 legislative session, for school year 2011-2012:

- 844 (3.2 percent) of first graders were retained;
- 516 (2.0 percent) of second graders were retained;
- 287 (1.12 percent) of third graders were retained;
- 179 (0.69 percent) of fourth graders were retained;
- 126 (0.49 percent) of fifth graders were retained;
- 133 (0.53 percent) of sixth graders were retained;
- 152 (0.62 percent) of seventh graders were retained;
- 145 (0.60 percent) of eighth graders were retained;
- 3,084 (11.76 percent) of ninth graders were retained;
- 2,761 (11.58 percent) of tenth graders were retained;
- 1,527 (7.41 percent) of eleventh graders were retained; and
- 1,445 (6.91 percent) of twelfth graders were retained.

Reading and Math Proficiency in New Mexico Disaggregated by Grade Level

Tables 1-3, below, indicate academic proficiency rates on the standards-based assessment for reading and math for students in grades 3-11 between 2011 and 2013.

Table 1: Elementary Schools Statewide

	Standards-Based Assessment Math Proficiency			Standards-Based Assessment Reading Proficiency		
	2013	2012	2011	2013	2012	2011
Third	51.0%	52.7%	51.5%	55.2%	52.4%	52.9%
Fourth	45.4%	44.0%	44.4%	45.7%	49.9%	46.5%
Fifth	43.1%	43.5%	41.9%	51.2%	55.0%	51.9%

Source: PED NM Accountability Data

LESC Created – August 2013

Table 2: Middle Schools Statewide

	Standards-Based Assessment Math Proficiency			Standards-Based Assessment Reading Proficiency		
	2013	2012	2011	2013	2012	2011
Sixth	39.6%	37.1%	36.7%	46.8%	48.3%	47.8%
Seventh	41.2%	41.7%	37.6%	49.8%	50.2%	47.6%
Eighth	42.2%	41.7%	40.8%	60.2%	54.3%	53.3%

Source: PED NM Accountability Data

LESC Created – August 2013

Table 3: High Schools Statewide

	Standards-Based Assessment Math Proficiency			Standards-Based Assessment Reading Proficiency		
	2013	2012	2011	2013	2012	2011
Tenth	30.2%	29.0%	*	41.0%	34.4%	*
Eleventh	42.0%	38.9%	38.0%	55.5%	45.3%	47.8%

Source: PED NM Accountability Data

LESC Created – August 2013

* 2012 was the first year that Grade 10 students were issued the Standards-Based Assessment

The data from the 2011 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 20 percent of fourth graders tested proficient or better in reading; and
- this performance was not statistically different from that on the 1992 NAEP in reading for fourth graders in New Mexico, while NAEP scores in reading for fourth graders nationwide have improved from 27 percent proficient in 1992 to 34 percent proficient in 2011.

BACKGROUND

Provisions in Current Law

Attachment 2, 22-2C-6, provides a copy of the provisions in current law. In 2000, the LESL 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:

- “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, upon the recommendation of the teacher and the school principal:
 - 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.

Parental Waiver

A parent or guardian may waive the school recommendation to retain the student in the same grade one time in grades one through eight. In this event, a student assistance team is required to develop an academic improvement plan to assure mastery of grade-level material. The student assistance team includes the student’s teacher, school counselor, school administrator, and parent or guardian. After remediation, a student shall enter the next higher grade if she or he has mastered the essential competencies. Currently, the law does not allow the parents’ rights to sign a waiver for eighth grade students who have failed to attain proficiency of standards and requires an appropriate remediation plan for those students.

At the end of eighth grade, a student will be retained for no more than one year if he or she fails to attain proficiency of standards. If the student assistance team determines that retention in the eighth grade will not assist the student achieve proficiency of standards, the team will design a high school graduation plan to meet the student’s need for entry into the workforce or a postsecondary educational institution. If a student is retained in the eighth grade, the student assistance team is required to develop a specific plan that addresses the student’s academic deficiencies and to prescribe a specific remediation plan to address those deficiencies.

Promotion and Retention in High School

After middle school, promotion from grade to grade is not governed by the statute. Once students enter high school, PED indicates that promotion depends on earning the number of course credits required by the school for graduation, divided roughly by four. Not all districts, however, have the same graduation requirements.

As shown above in “Retention and Academic Proficiency Data in New Mexico,” retention rates at grade 9 are much higher than in earlier grades; in part because staying on track for on-time graduation in high school is a matter of course-by-course credit accumulation rather than the diagnostic assessment of a student’s academic proficiency established in law and employed through grade 8.

Research

A national survey, *Passing on Failure: District Promotion Policies and Practices*, 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.

According to data released by the US Department of Education's Office of Civil Rights (OCR), in its 2009-2010 Civil Rights Data Collection (CRDC), OCR included the number of students retained at each grade level as an element of the data it collects at regular intervals from a large percentage of school districts nationwide. The CRDC has generally been collected biennially from school districts in each of the 50 states plus the District of Columbia. The CRDC sample includes information on students in approximately 7,000 school districts and 72,000 schools. It is important to note that the CRDC does not include data from all school and districts in the nation, although it does include data from all districts with greater than 3,000 students and 85 percent of all students; therefore the conclusions apply only to these districts and schools sampled. **Attachment 3, CRDC Retention Data**, presents a visual of the results.

The OCR data indicate that 2.3 percent of all students in approximately 7,000 school districts and 72,000 schools sampled were retained at the end of school year 2009-2010. According to the CRDC data, approximately 1.0 percent of students were retained in grades K-8, with the largest numbers repeating kindergarten or the first grade. The remaining 1.3 percent of students retained were at the high school level, when many students fail to accumulate enough credits to advance their academic standing but often repeat only specific courses to make progress toward graduation.

Related Legislation

In 2010, HM 46a, *Study Reading & Math Scores & Dropout Rates*, was passed to request a study of fourth and eighth grade reading and mathematics proficiency scores asking:

- PED to tabulate and compare the fourth and eighth grade reading and mathematics proficiency scores for graduating and non-graduating students for the past two years, with breakdowns by school district;
- tabulations and comparisons that take into account contributing factors to non-graduation, such as transfer out of the school district, pregnancy, dropout, and other factors; and
- a final report of the study to be transmitted to the Governor, the LESC, the Higher Education Department, the Workforce Solutions Department; and to be published on a publicly available website.

HM 46a did not specify a date for completion of the study and no report has been provided to date.

SIDE-BY-SIDE COMPARISON OF CURRENT LAW & 2013 SENATE BILLS (260a, 474, 640)

	Current Law (22-2C-6)	SB 260a	SB 474	SB 640
Brief Summary of Retention Components	<ul style="list-style-type: none"> • <u>At the end of grades 1-7</u>, mandates retention for a student who completes a prescribed remediation program and is still not academically proficient, unless the parent signs a waiver. • <u>At the end of grade 8</u>, provides two options depending on a student’s academic proficiency. • Allows parents to opt out of retention for one year. • Exempts students enrolled in special education from retention and requires that retention and promotion decisions be made according to the student’s individual educational plan (IEP). 	<ul style="list-style-type: none"> • <u>At the end of grades K-2</u>, requires students who are deficient in reading be provided with intensive remediation/intervention. • At the end of grade 3, mandates retention for students who are not proficient in reading. • <u>At the end of grades 4-8</u>, requires intensive remediation/intervention for students who are not academically proficient. • Allows parents to sign a form of refusal for any prescribed intervention. • Allows parents to petition retention only if their child has attended at least 95 percent of the school year. • Allows exceptions for retention. 	<ul style="list-style-type: none"> • <u>At the end of grades K-8</u>, mandates retention for a student who completes remediation and/or intervention and still has not achieved grade-level proficiency. • Requires immediate intervention or remediation for students who are proficient in reading or math. • Requires parental agreement for retention. • Allows parents to sign a refusal of retention. • Allows exceptions for retention. 	<ul style="list-style-type: none"> • <u>At the end of grades 1-7</u>, mandates retention for a student who completes remediation and has not achieved reading proficiency, unless the parent signs a waiver. • <u>At the end of grade 8</u>, provides two options depending on a student’s reading proficiency. • Keeps the current parent waiver to opt out of retention for one year. • Keeps current exemption for retention.
EPSS	<p>“Educational plan for student success” means a student-centered tool developed to define the role of the academic improvement plan within the school and district that addresses methods to improve student learning and success and that identifies specific measures of a student’s progress.</p>	<p>EPSS means a student-centered tool developed to define the role of the academic 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.</p>	Same as in current law.	Same as in current law.

SIDE-BY-SIDE COMPARISON OF CURRENT LAW & 2013 SENATE BILLS (260a, 474, 640)

	Current Law (22-2C-6)	SB 260a	SB 474	SB 640
Proficiency Standard	<p>“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 (§ 22-1-2(A) NMSA 1978).</p>	<p>“Academic proficiency” means a score on the standards based assessment (SBA) that is higher than the lowest level established by PED.</p> <p>“Deficient in reading” means a score range on the screening assessment determined by PED.</p> <p>“Proficient in reading” means a score on the SBA that is higher than the lowest level established by PED.</p>	<p>“Grade-level proficiency” means a score on a school-district-approved SBA that is comparable among many school districts statewide.</p>	<p>“Reading proficiency” means a score on a valid and reliable assessment that is higher than the lowest level established by PED.</p>
Student Assistance Team (SAT)	<p>SAT means a group consisting of a student’s teacher, school counselor, school administrator, and parent.</p>	<p>SAT means a collaborative group consisting of a student’s teacher, school counselor, school administrator, parent and, if the parent wishes, a student advocate chosen by the student or parent.</p>	<p>SAT means a group consisting of a student’s teacher, school counselor, school administrator, parent and, if the parent wishes, a student advocate chosen by the student or parent.</p>	<p>SAT means a group consisting of a student’s teacher, school counselor, school administrator, parent and, if the parent wishes, a student advocate chosen by the student or parent.</p>
Remediation Programs	<p>Remediation and academic improvement programs include tutoring, extended day or week programs, summer programs or other research-based interventions and models for student improvement.</p>	<p>“Remediation programs” include summer school, extended day or week programs, tutoring, progress-based monitoring, and other research-based models for student improvement.</p>	<p>“Remediation” includes summer school, extended day or week programs, tutoring, progress-based monitoring or other research-based methods for improvement of student proficiency, as provided by trained personnel.</p>	<p>“Remediation programs” include summer school, extended day or week programs, tutoring, progress-based monitoring, and other research-based models for student improvement.</p>
Screening Assessment	<p>Not mentioned.</p>	<p>“Screening assessment” means the assessment that measures the acquisition of reading skills and approved by PED.</p>	<p>“Reading screening assessment” means a school-district-adopted, PED-approved formative assessment that</p>	<p>“Screening” means a district-determined assessment that is the same for all school</p>

SIDE-BY-SIDE COMPARISON OF CURRENT LAW & 2013 SENATE BILLS (260a, 474, 640)

	Current Law (22-2C-6)	SB 260a	SB 474	SB 640
Screening Assessment (continued)	Not mentioned.	<p>Must be given, including, if appropriate, assessments in the student’s first and second languages for English language learners, to students in grades 1-3, at the end of the first nine weeks of the school year.</p> <p>Data from SY 2013-14 must be used to establish baseline assessment data on reading proficiency for students in grades K-3 and 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 program.</p>	<p>measures the acquisition of reading skills, as appropriate for the grade level.</p> <p>“Math screening assessment” means a school-district-adopted, PED-approved formative assessment that measures content, operations, applications, problem-solving and consumer skills, as appropriate for the grade level.</p> <p>The reading and math screening assessments must be administered to students in grades K-8, within the first three weeks of the school year.</p> <p>Screening assessment results that indicate a student is not proficient in reading or math must be used to immediately help the student progress toward grade-level proficiency.</p>	<p>districts, is approved by PED, and that measures the acquisition of reading skills.</p> <p>The screening must be administered to students in grades K-3 at the beginning of the school year.</p> <p>Screening results must be used to establish baseline assessment data on reading proficiency for students in grades K-3.</p>
Improvement Programs	Remediation programs, academic improvement programs, and promotion policies must be aligned with school-district-determined assessment results and requirements of the state assessment and accountability program.	<u>For grades K-3</u> : intervention and remediation programs, reading improvement programs, and promotion policies must be adopted and aligned with the screening assessment results and be aligned with Common Core State Standards (CCSS).	Beginning in SY 2013-2014, <u>intervention and remediation for students in grades K-8</u> , as defined in the EPSS, and retention and promotion policies must be aligned with valid and reliable assessment results and must be aligned with state standards.	<u>For grades K-3</u> : prescribed intervention and remediation programs and academic improvement programs must be adopted and aligned with screening results and must be aligned with state standards for each grade level and subject area

SIDE-BY-SIDE COMPARISON OF CURRENT LAW & 2013 SENATE BILLS (260a, 474, 640)

	Current Law (22-2C-6)	SB 260a	SB 474	SB 640
Improvement Programs (continued)	<p>Remediation programs and academic improvement programs must be incorporated into the school district’s EPSS and filed with PED.</p> <p>Must be approved by local school boards to provide special instructional assistance to students in grades 1-8 who do not demonstrate academic proficiency.</p> <p>Diagnosis of weaknesses identified by a student’s academic achievement may serve as criteria in assessing the need for remedial programs or retention.</p>	<p><u>For grades 4-8:</u> intervention and remediation programs, reading improvement programs and promotion policies must be aligned with school-district-approved, valid, and reliable assessment results and they must be aligned with state standards.</p>	<p>See previous page.</p>	<p>pursuant to the uniform grade and subject curricula in the <i>Public School Code</i>.</p> <p>Beginning in SY 2013-2014, school districts must approve prescribed intervention and remediation programs and academic improvement programs that have demonstrated effectiveness in providing special instructional assistance to students who do not demonstrate reading proficiency.</p> <p><u>For grades 4-8:</u> school districts must use a valid and reliable assessment to assess reading proficiency. Prescribed intervention and remediation programs and academic improvement programs and promotion policies must be aligned with valid and reliable assessment results and must be aligned with state standards for each grade level and subject area.</p>

SIDE-BY-SIDE COMPARISON OF CURRENT LAW & 2013 SENATE BILLS (260a, 474, 640)

	Current Law (22-2C-6)	SB 260a	SB 474	SB 640
Improvement Plans	<p>“Academic improvement plan” means a written document developed by the SAT that describes the specific content standards required for a certain grade level that a student has not achieved and that prescribes specific remediation programs such as summer school, extended day or week school, and tutoring.</p> <p>Outlines timelines and monitoring activities to ensure progress toward overcoming academic deficiencies.</p>	<p>“Reading improvement plan” means a written document developed by the SAT 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 K-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.</p>	<p>“Academic improvement plan” means a written document developed by the SAT that describes the specific content standards required for a certain grade level that a student has not achieved, prescribes specific intervention or remediation that has demonstrated effectiveness and, for students whose home language is not English, incorporates appropriate instructional practices.</p>	<p>“Academic improvement plan” means a written document developed by the SAT that describes the specific reading standards required for a certain grade level that a student has not achieved and that prescribes intervention and 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.</p>
Targeted Instruction	Not mentioned.	<p>“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 weekly equivalent.</p>	<p>“Intensive targeted instruction” means extra instruction in either small groups or as individuals that shall be no less than 30 minutes per day and three days per week and taught by a teacher or tutor who is not the student’s teacher.</p>	<p>“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.</p>
Retention Exemptions	Promotion and retention decisions affecting a student enrolled in special education must be made in according to the student’s IEP.	<p>Keeps current exemption and adds exemptions for a student who:</p> <ul style="list-style-type: none"> • scores at least at the 50th percentile on a PED-approved, norm-referenced test, or at the proficient level on an 	<p>Exempts a student from retention if the student:</p> <ul style="list-style-type: none"> • demonstrates grade-level proficiency with a portfolio of the student’s work 	Same as in current law.

SIDE-BY-SIDE COMPARISON OF CURRENT LAW & 2013 SENATE BILLS (260a, 474, 640)

	Current Law (22-2C-6)	SB 260a	SB 474	SB 640
Retention Exemptions (continued)	See previous page.	<p>alternative school-district-approved, criterion-referenced assessment;</p> <ul style="list-style-type: none"> • demonstrates reading proficiency on a teacher-developed portfolio; • shows sufficient growth by meeting PED-specified levels of reading proficiency; • is an English language learner; or • has already been retained once in grades K-2. 	<ul style="list-style-type: none"> • compiled by the student's teacher or SAT; • shows sufficient progress toward grade-level proficiency as determined by the SAT; • scores at least at the 50th percentile on a school-district approved norm-referenced assessment or at a proficient level on an alternative school district-approved criterion-referenced assessment; or • is an English language learner. 	See previous page.
Intervention	<p>Specific academic deficiencies and remediation strategies must be explained to the student's parent and a written intervention plan developed containing time lines, academic expectations and the measurements to be used to verify that a student has overcome academic deficiencies. Remediation programs and academic improvement programs include tutoring, extended day or week programs, summer programs and other research-based interventions and models for student improvement.</p>	<p>"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, RTI as defined in statute and PED rule</p>	<p>"Intervention" means targeted instructional practice with an intervention teacher for individual students or a small group of students, including students whose home language is not English, aligned with the results of a valid and reliable assessment and, if applicable, RTI as defined in statute and PED rule.</p> <p>"Intervention teacher" means a licensed or certified teacher who:</p>	<p>"Intervention" means targeted instructional practice for individual students or small groups of students aligned with the results of a valid and reliable assessment or RTI.</p>

SIDE-BY-SIDE COMPARISON OF CURRENT LAW & 2013 SENATE BILLS (260a, 474, 640)

	Current Law (22-2C-6)	SB 260a	SB 474	SB 640
Intervention (continued)	<p>“Response to intervention” (RTI) means a multitiered intervention model that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a framework for making educational programming and eligibility decisions (§ 22-13-6(F) NMSA 1978).</p>	See previous page.	<ul style="list-style-type: none"> ➤ has the expertise to determine a student’s instructional level in reading or math; ➤ has the expertise to help a student work toward a higher level of proficiency in reading or math; and ➤ is not the student’s classroom teacher. 	See previous page.
Costs of Remediation	<p>Must be borne by the school district. The cost of summer and extended day remediation programs and academic improvement programs for students in grades 9-12 must be borne by the parent unless the parents are determined to be indigent by PED; thence the school district bears these costs.</p>	<p>Beginning SY 2014-2015, local school districts must approve and bear the cost of intervention and 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. Keeps current provisions for grades 9-12.</p>	<p>School districts must approve, and PED must bear the cost of, intervention and remediation that have demonstrated effectiveness, to provide assistance to students in grades K-8 who do not demonstrate grade-level proficiency in reading or math. Keeps current provisions for grades 9-12.</p> <p>Makes an appropriation to fund reading and math intervention teachers for students in grades K-8 who are in need of intervention.</p>	<p>Removes provisions in current law.</p> <p>Makes an appropriation to fund professional development for teachers’ adoption of effective reading instruction strategies.</p>
Notification to Parents	<p>Parents must be notified no later than the end of the second grading period that their child is not academically proficient and that a conference must be held.</p>	<p><u>For grades K-3:</u> beginning in SY 2013-14, parents of children who are deficient in reading at the end of the first grading period, must be given notice that their child must be provided with intensive targeted instruction.</p>	<p><u>For grades K-8:</u> beginning in SY 2013-14, parents of children who are not progressing toward grade-level proficiency by the end of the first grading period must be notified in writing.</p>	<p><u>For grades K-3:</u> by the 80th day of the school year, parents of children who have not achieved reading proficiency, must be given notice that their child must be provided with intensive targeted instruction.</p>

SIDE-BY-SIDE COMPARISON OF CURRENT LAW & 2013 SENATE BILLS (260a, 474, 640)

	Current Law (22-2C-6)	SB 260a	SB 474	SB 640
Notification to Parents (continued)	Specific academic deficiencies and remediation strategies must be explained to parents.	<u>For grades 4-8:</u> parents must be notified in writing no later than the end of the second grading period of each school year that their child is not academically proficient and that a conference must be held.	The parent must be notified in writing that the SAT needs to meet to immediately discuss and adopt an academic improvement plan.	<u>For grades 4-8:</u> no later than the end of the first grading period of the school year, parents must be notified in writing that their child has not achieved reading proficiency and that a conference with SAT must occur.
Meetings Involving Parents	<p><u>For grades 1-7:</u> after the notification is sent to parents of students who are academically proficient, the parent and the teacher must hold a conference to discuss possible remediation programs available to assist the student in becoming academically proficient.</p> <p>If a waiver to opt out of retention is signed, the SAT must meet to create the academic proficiency plan.</p> <p><u>For grade 8:</u> SAT meets to determine if retention will assist the student to become academically proficient. If it will not, then the SAT must design a high school graduation plan to meet the student's needs for entry into the work force or a post-secondary educational institution.</p>	<p><u>For grades K-3:</u> SAT must meet to develop a reading improvement plan for a student who is deficient in reading.</p> <p><u>For grades 4-8:</u> SAT must meet to discuss strategies, intervention, and remediation to help students who are not academically proficient.</p> <p>Parents must be provided with specific strategies to use in helping the student achieve reading proficiency.</p>	<p><u>For grades K-8:</u> at the SAT meeting, parents must be presented with and receive a detailed explanation of how SAT will help the student reach proficiency in reading or math.</p> <p>Parent involvement expectations and opportunities must be presented and explained to the parents.</p>	<p><u>For grades 4-8:</u> at the SAT meeting, parents must be presented orally and in writing with information about the areas in which the student needs improvement and the available strategies, prescribed interventions, and remediation programs.</p> <p>In the SAT meeting, an academic improvement plan for the student is developed.</p> <p>Intervention files are kept for students, which are maintained as part of the student's permanent record.</p>

SIDE-BY-SIDE COMPARISON OF CURRENT LAW & 2013 SENATE BILLS (260a, 474, 640)

	Current Law (22-2C-6)	SB 260a	SB 474	SB 640
Parental Waiver	Allows parents to sign a waiver indicating their desire that the student be promoted to the next higher grade with an academic improvement plan designed to address specific academic deficiencies.	<u>For grade 3:</u> allows parents to petition retention decisions only if their child has attended at least 95 percent of the instructional time during the school year and if the student has participated in all required levels of remediation prescribed by the school district in the reading improvement plan and the parent signs a contract that outlines a reading intervention plan for the next grade.	<u>For grades K-8:</u> requires agreement of a parent to retain a student. If a parent signs a refusal of retention notice, then the student must begin the next higher grade with an academic improvement plan developed by the SAT to achieve grade-level proficiency.	Allows parents to sign a form to refuse to allow their child to participate in any prescribed intervention or remediation.
Retention	<u>At the end of grades 1-7:</u> if a student completes a prescribed remediation program and is still not academically proficient, then he or she must be retained unless the parent signs a waiver to opt out of retention. If a parent signs a waiver to opt out of retention and the student does not become academically proficient at the end of that year as measured by grades, performance on school district assessments, and other measures identified by the school district, then 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.	<u>At the end of grades K-2:</u> beginning in SY 2013-2014, students who are deficient in reading <i>may</i> be retained pursuant to an established reading improvement plan. <u>At the end of grade 3:</u> beginning in SY 2014-2015, if a student completes a prescribed intervention or remediation program and is still not proficient in reading, upon the recommendation of the principal in consultation with the teacher, the student must be retained in the same grade with a reading improvement plan that is different from the prior year's reading improvement plan developed by the SAT so that the student may become proficient in reading. <u>At the end of grades 4-8:</u> no mandatory retention.	<u>At the end of grades K-8:</u> if a student completes intervention and remediation and still has not achieved grade-level proficiency, then the student must be retained with the agreement of a parent and an academic improvement plan developed by the SAT to achieve grade-level proficiency. Students who do not demonstrate grade-level proficiency in reading or math for two successive school years and have not already been retained must be retained.	<u>At the end of grades 1-7:</u> if a student completes remediation and has not achieved reading proficiency, upon the recommendation of the teacher and school principal, the student must be retained in the same grade for no more than one school year with an academic improvement plan developed by the SAT in order to achieve reading proficiency.

SIDE-BY-SIDE COMPARISON OF CURRENT LAW & 2013 SENATE BILLS (260a, 474, 640)

	Current Law (22-2C-6)	SB 260a	SB 474	SB 640
Retention (continued)	At the end of <u>grade 8</u> : a student who is not academically proficient must be retained for no more than one school year unless the SAT determines that retention will not assist the student to become academically proficient. If a student is retained in 8 th grade, the SAT must develop a specific academic improvement plan that clearly delineates the student's academic deficiencies and prescribes a specific remediation plan to address those academic deficiencies.	See previous page.	See previous page.	At the end of <u>grade 8</u> : a student who has not achieved reading proficiency must be retained in the 8 th grade for no more than one school year unless the SAT determines that retention will not assist the student to achieve reading proficiency. If a student is retained in the 8 th grade, the SAT must develop a specific academic improvement plan that clearly delineates the student's needs and prescribes a targeted remediation plan.
Alternative Plans	A student who does not demonstrate academic proficiency for two successive school years must be deferred to the SAT for placement in an alternative program designed by the district. Alternative plans must be filed with PED.	<u>For grades 1-8</u> : a student who does not demonstrate reading proficiency for two successive school years must be referred to the SAT for placement in an alternative program designed by the school district. Alternative program plans must be filed with PED.	Not mentioned.	A student who does not achieve reading proficiency for two successive school years must be referred to the SAT for placement in an alternative program designed by the school district. Alternative program plans must be filed with PED.

SIDE-BY-SIDE COMPARISON OF CURRENT LAW & 2013 SENATE BILLS (260a, 474, 640)

	Current Law (22-2C-6)	SB 260a	SB 474	SB 640
Reporting Requirements	Not mentioned.	Not mentioned.	<p>By the end of each school year, each school must report to the school district.</p> <p>By June 15 of each year, each school district must report to PED.</p> <p>By July 31 of each year, PED must report to the LESC.</p> <p>The reports must include remediation, intervention, and retention information.</p>	<p>By May 15 of each year, each school district must include remediation, intervention, and retention info its annual accountability report.</p> <p>By September 30 of each year, each school district must provide to PED a professional development plan that includes proposals for teachers to receive professional development to adopt effective instructional strategies in the areas of reading.</p> <p>On alternate months during the interim, PED must report to the LESC.</p>

22-2C-6. Remediation programs; promotion policies; restrictions.

A. Remediation programs, academic improvement programs and promotion policies shall be aligned with school-district-determined assessment results and requirements of the state assessment and accountability program.

B. Local school boards shall approve school-district-developed remediation programs and academic improvement programs to provide special instructional assistance to students in grades one through eight who do not demonstrate academic proficiency. The cost of remediation programs and academic improvement programs shall be borne by the school district. Remediation programs and academic improvement programs shall be incorporated into the school district's educational plan for student success and filed with the department.

C. The cost of summer and extended day remediation programs and academic improvement programs offered in grades nine through twelve shall be borne by the parent; however, where parents are determined to be indigent according to guidelines established by the department, the school district shall bear those costs.

D. Diagnosis of weaknesses identified by a student's academic achievement may serve as criteria in assessing the need for remedial programs or retention.

E. A parent shall be notified no later than the end of the second grading period that the parent's child is not academically proficient, and a conference consisting of the parent and the teacher shall be held to discuss possible remediation programs available to assist the student in becoming academically proficient. Specific academic deficiencies and remediation strategies shall be explained to the student's parent and a written intervention plan developed containing time lines, academic expectations and the measurements to be used to verify that a student has overcome academic deficiencies. Remediation programs and academic improvement programs include tutoring, extended day or week programs, summer programs and other research-based interventions and models for student improvement.

F. At the end of grades one through seven, three options are available, dependent on a student's academic proficiency:

- (1) the student is academically proficient and shall enter the next higher grade;
- (2) the student is not academically proficient and shall participate in the required level of remediation. Upon certification by the school district that the student is academically proficient, the student shall enter the next higher grade; or
- (3) the student is not academically proficient after completion of the prescribed remediation program and upon the recommendation of the teacher and school principal shall either be:

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

(b) promoted to the next grade if the parent refuses to allow the child to be retained pursuant to Subparagraph (a) of this paragraph. In this case, the parent shall sign 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. The academic improvement plan shall be developed by the student assistance team outlining time lines and monitoring activities to ensure progress toward overcoming those academic deficiencies. Students failing to become academically proficient at the end of that year as measured by grades, performance on school district assessments and other measures identified by the school district shall be retained in the same grade for no more than one year in order to have additional time to achieve academic proficiency.

G. At the end of the eighth grade, a student who is not academically proficient shall be retained in the eighth grade for no more than one school year to become academically proficient or if the student assistance team determines that retention of the student in the eighth grade will not assist the student to become academically proficient, the team shall design a high school graduation plan to meet the student's needs for entry into the work force or a post-secondary educational institution. If a student is retained in the eighth grade, the student assistance team shall develop a specific academic improvement plan that clearly delineates the student's academic deficiencies and prescribes a specific remediation plan to address those academic deficiencies.

H. A student who does not demonstrate academic proficiency for two successive school years shall be referred to the student assistance team for placement in an alternative program designed by the school district. Alternative program plans shall be filed with the department.

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

J. For the purposes of this section:

(1) "academic improvement plan" means a written document developed by the student assistance team that describes the specific content standards required for a certain grade level that a student has not achieved and that prescribes specific remediation programs such as summer school, extended day or week school and tutoring;

(2) "school-district-determined assessment results" means the results obtained from student assessments developed or adopted by a local school board and conducted at an elementary grade level or middle school level;

(3) "educational plan for student success" means a student-centered tool developed to define the role of the academic 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; and

(4) "student assistance team" means a group consisting of a student's:

- (a) teacher;
- (b) school counselor;
- (c) school administrator; and
- (d) parent.

History: 1978 Comp., § 22-2-8.6, enacted by Laws 1986, ch. 33, § 7; 1987, ch. 320, § 3; 1993, ch. 226, § 9; 2000, ch. 20, § 1; recompiled and amended as § 22-2C-6 by Laws 2003, ch. 153, § 15; 2007, ch. 309, § 4.

Cross references. — For student achievement, see 22-2C-1 NMSA 1978 et seq.

Compiler's notes. — This section was compiled as Section 22-2-8.6 NMSA 1978 at the time of the enactment of Laws 2003, ch. 143, § 2.

The 2007 amendment, effective June 15, 2007, amended Subsection B to change "fail to attain adequate yearly progress" to "do not demonstrate academic proficiency" and provided that students failing to become academically proficient as measured by grades, performance on school district assessments and other measures identified by the school district shall be retained in the same grade to provide additional time to achieve academic proficiency.

The 2003 amendment, effective April 4, 2003, recompiled former 22-2-8.6 NMSA 1978 as 22-2A-6 NMSA 1978 (relocated to 22-2C-6), and deleted "Educational content standards" at the beginning of the section heading; rewrote Subsection A to the extent that a detailed comparison is impracticable; in Subsection B substituted "adequate yearly progress" for "a level of proficiency established by the content standards" near the middle and deleted "of education" at the end.

The 2000 amendment, effective May 17, 2000, in the section heading, substituted "Educational content" for "Essential competencies" and "restrictions" for "exception"; rewrote Subsections A through D; added Subsection E; redesignated former Subsection E as F and rewrote that section; added Subsection G; redesignated former Subsection G as H and rewrote that section; and added Subsections I and J.

The 1993 amendment, effective July 1, 1993, deleted "of education" following "state board" in Subsection C; deleted former Subsection H, which read "The provisions of Subsection A of this section shall take effect in the 1987-88 school year"; and deleted former Subsection I, which read "The provisions of Subsections B through G of this section shall take effect beginning in the 1989-90 school year."

ANNOTATIONS

Constitutionality. — Subsection C does not offend the "free school guaranty" of N.M. Const., art. XII, § 1, as that provision is construed by the New Mexico Supreme Court. 1990 Op. Att'y Gen. No. 90-06.

CIVIL RIGHTS DATA COLLECTION RETENTION DATA

Repeating Grades

The number of students who had to repeat a grade in the 2010-11 school year spiked in 9th grade. In most grade levels, black and Hispanic students make up a large and disproportionate number of those retained, according to first-ever, nationwide data from the U.S. Department of Education's office for civil rights.

SOURCES:
U.S. Department of Education;
Education Week

