

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: CS/HB 21 & 100

50th Legislature, 1st Session, 2011

Tracking Number: .185726.2

Short Title: Limit Certain School Grade Promotions

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**HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILLS 21 & 100**

Bill Summary:

Effective July 1, 2011, CS/HB 21 & 100 repeals the section of the *Public School Code* that establishes policies and procedures for remediation and retention of students in grades K through 7 and creates a new section of law.

CS/HB 21 & 100 provides that a student who is not proficient in reading by the end of grade 3 shall not be promoted to grade 4, with no opportunity for a parental waiver, unless the student demonstrates proficiency before the start of the fourth grade school year.

Among its provisions, the bill:

- defines “academic improvement plan,” “Educational Plan for Student Success” (EPSS), “school-district-determined assessments,” “student assistance team” (SAT), and other terms;
- defines “reading proficiency” to mean a score on the state standards-based assessment higher than the lowest level established by the Public Education Department (PED);
- defines “school districts” to include charter schools; and
- adds a “student advocate chosen by the student or parent” to the definition of the SAT.

While CS/HB 21 & 100 incorporates several provisions from current law, it adds a number of new provisions. Among them, the bill requires that school districts:

- assess and determine each student’s reading ability using:
 - in grades 3 through 8, the statewide standards-based assessments; and
 - in Kindergarten through grade 2, school-district-determined assessments;
- incorporate remediation and academic improvement programs into their EPSS, to be submitted to PED for approval;
- provide a student who has a substantial deficiency that would preclude academic progress with remedial and intensive instruction in every grade level until the student achieves proficiency or completes high school;

- depending on availability of funds, as of school year 2013-2014 bear the cost of remediation programs, including summer and extended day programs, for grades 9-12 students as they currently must for grades K-8;
- when a student is not academically proficient at the end of the second grading period in any grade:
 - a conference be held with the parent and student advocate to develop an academic improvement plan;
 - the parent be provided with specific strategies to help the child; and
 - the academic improvement plan be implemented immediately;
- in school years 2010-2011 and 2011-2012, establish baseline reading proficiency assessment data for grades 3, 5, and 8;
- at the beginning of and throughout kindergarten through grade 3, evaluate each student to determine reading ability, measuring phonemic awareness, phonics, fluency, vocabulary, and comprehension; and, if the student is deficient, convene an SAT to develop an academic improvement plan;
- for third grade students beginning in school year 2012-2013:
 - if at the end of the first grading period a student is deficient in reading, notify the parent that the student is in danger of being retained and that a parental waiver will not be allowed;
 - if the student receives remediation and is not proficient in reading by the end of third grade on the statewide standards-based assessment, retain the student for no more than one year; and
 - provide a retained student with regular evaluations and an intensive program different from the previous year's program;
 - prescribes remediation and academic improvement programs such as response to intervention (RtI), tutoring, extended day or week programs, summer programs, and other research-based interventions and models;
- give a student an opportunity to demonstrate proficiency on a PED-approved test at the end of the summer prior to grade 4, and be promoted; and
- exempt a student from retention if the student:
 - scores on a PED-approved alternative reading assessment, at least at the 50th percentile on a norm-referenced test, or proficient on a criterion-referenced test;
 - demonstrates reading proficiency on a teacher-developed portfolio;
 - shows sufficient growth by meeting PED-specified levels of reading proficiency;
 - is an English-language learner (ELL) who:
 - ✓ reads proficiently in a language other than English; or
 - ✓ has had less than two years of instruction in English for speakers of other languages; or
 - has an Individualized Education Program (IEP).

CS/HB 21 & 100 also requires a principal whose school includes any of grades 3 through 8 to ensure the implementation of an academic improvement plan that meets the requirements of the bill for all students who require a plan.

Finally, the bill eliminates a provision in current law to retain students in grade 8, without the possibility of a parental waiver, who do not demonstrate academic proficiency.

Fiscal Impact:

CS/HB 21 & 100 does not contain an appropriation.

Fiscal Issues:

The fiscal impact of implementing CS/HB 21 & 100 is indeterminate.

- Current law requires school districts to develop remediation and academic improvement programs to provide special instructional assistance to students in grades 1 through 7 who do not demonstrate academic proficiency, whether or not they are retained. The number of students who currently participate in those programs is not known.
- School districts are also required by PED guidelines to implement RtI, a three-tiered, problem-solving model that uses a set of increasingly intensive academic and/or behavioral supports based on the data resulting from progress monitoring of student's responses to the interventions attempted.
- CS/HB 21 & 100 would require school districts to bear the cost of remediation for high school students beginning in school year 2013-2014, depending on availability of funds. Currently, parents are liable for these costs unless indigent according to PED guidelines.
- PED points out that federal funds under Title I of the *Elementary and Secondary Education Act*, as well as some *Individuals with Disabilities Education Act* (IDEA) funds, may be available to provide instructional support and RtI interventions to students who might be affected if CS/HB 21 & 100 is enacted, under certain circumstances.
 - Not all New Mexico schools receive Title I funds, which are targeted at schools with the highest percentage or number of students in poverty.
 - School districts may, and in some cases must, use up to 15 percent of their IDEA funds for RtI for students in the general population who are struggling; however, the remaining 85 percent of IDEA funds may only be used to serve students with identified disabilities.

Substantive Issues:

Reading Proficiency in New Mexico: The number of students who would require remediation or retention if CS/HB 21 & 100 becomes law is unknown, but data from spring 2010 are suggestive:

- approximately 43 percent of third grade students statewide were below “proficient” on the third grade statewide standards-based assessment in reading;

- approximately 15.8 percent were at the lowest level, or “beginning steps,” on the assessment, although an unknown percentage of them would fall into one of the exempt categories listed in the bill;
- the percentage of third graders who tested at “beginning steps” varied widely by district, from none in Elida, Floyd, and Mountainair to a high of 46.2 percent in Jemez Valley; and
- the percentage at the lowest reading level also varies by income and ethnicity, from 7.7 percent of Asian and 8.5 percent of Caucasian students to 17.4 percent of Hispanic, 18.8 percent of low income, 20.9 of African-American, and 25.5 percent of American Indian students.

Since 2005, while the rate of reading proficiency has varied within a few percentage points from year to year, the percentage of all third grade students in the state scoring proficient or advanced in reading has improved by only 2.0 percentage points, from 55 to 57 percent.

By another measure, the National Assessment of Educational Progress (NAEP), New Mexico fourth graders demonstrate among the lowest rates of reading proficiency in the nation:

- just 20 percent of New Mexico fourth graders tested proficient or in 2009;
- the average scale score for New Mexico fourth graders in 2009 was 208;
- this performance was the same as that of state fourth graders in 2002; and
- it was lower than fourth graders in 43 other states, the same as seven, and better only than the District of Columbia.

The Education Commission of the States (ECS) reports that a fairly extensive research base exists on how children learn to read, and suggests that more students are not reading at grade level because of a lack of prevention, diagnosis, and intervention related to reading problems; inadequate teacher preparation and professional development; and the absence of reading standards and accountability. ECS notes that many states are responding with policies targeted at student readiness, intervention, teacher quality, and accountability, and asserts that the most effective strategy is a comprehensive initiative that addresses all of these policy areas, closely tracks student progress, and uses solid information to make adjustments so that all students read more successfully.

Social Promotion

Despite provisions of current law to retain unprepared students (“see Background,” below), data from PED show that, in school year 2008-2009, for example:

- only 292 third grade students were retained, although approximately 39 percent of third graders scored below proficient on the state standards-based assessment in reading; and
- the following year, an even higher percentage – 49 percent – of that cohort in grade 4 scored below proficiency in reading.

Beginning in 2002, the State of Florida implemented a “promotion gate” policy at the third grade level as part of its statewide reading initiative (see Attachment, “Florida Reading Initiative Fact Sheet”).

- According to Just Read, Florida!, an arm of the State Department of Education, the state reading initiative has required each school district:
 - since 2002, to identify an intensive program for retained students;
 - since 2005, to have a comprehensive reading plan for grades K-12 that outlines a systemic strategy to improve student reading based on the science of reading, that specifies diagnostic assessments and interventions to support struggling readers, and that includes teacher professional development grounded in scientific research;
 - to give retained students intensive interventions, including a three-week Summer Reading Camp, that address their specific reading deficiencies, as identified by a valid and reliable diagnostic instrument; and
 - to develop a Reading Enhancement and Acceleration Development (READ) Initiative to prevent retention of third grade students.

- In addition to approximately \$300 million in federal Reading First funds awarded to Florida between 2003 and 2009, the Florida legislature has appropriated state funds annually for the reading initiative. Each year since FY 08, for example, school districts have received over \$100 million annually in state funds specifically targeted for their reading programs.

- Although outcome data for the students retained as a result of the Florida third grade promotion gate policy are not available, advocates for the Florida model claim that has caused improvements in fourth grade NAEP scores. Between 2002 and 2009:
 - average NAEP scores for all Florida fourth grade students rose 12 points, from 214 to 226 (slightly more than one grade level); and
 - the achievement gap between Hispanic and all students narrowed from 7 to 3 points.

At least one commentator has questioned whether the growth in fourth grade NAEP performance in Florida results from removing the lowest-scoring students from the fourth grade pool. However, since retained students eventually enter fourth grade, their scores are eventually reflected on NAEP.

Background:

According to ECS, learning to read is an essential foundation for success in our society. Research shows that children who are not proficient readers by the end of third grade:

- have difficulties throughout the course of their schooling;
- perform poorly in other subjects; and
- may never graduate.

In 2000, the Legislative Education Study Committee (LESC) endorsed legislation that was enacted to address the problem of students not achieving at grade level but promoted to the next grade despite being unprepared – a practice known as “social promotion.” The law concerning remediation and retention currently requires that if a student is not academically proficient at the end of grades 1 through 7, a district must either:

- require the student to participate in remediation, after which, if proficient, the student shall enter the next grade; or

- after completing the remediation program, if the student is still not proficient, based on the Student Assistance Team (SAT) recommendation, either:
 - retain the student in the same grade for no more than one year with an academic improvement plan developed by the SAT; or
 - *if the parent signs a waiver*, promote the student to the next grade with a written academic improvement plan developed by the SAT and the parent, with the understanding that if not proficient by the end of the next school year, the student will be retained in the same grade for no more than one year; and
- if the student has not attained proficiency after two years in the same grade, refer the student to the SAT for placement in an alternative program.

A 2009 national literature review of approximately 30 longitudinal studies on grade retention states that research on retention is characterized by conflicting conclusions. Overall, the review states, “the preponderance of evidence argues that students who repeat a grade are not better off, and are sometimes worse off, than if they had been promoted with their classmates.” However, there are studies that show overall benefits. The authors of the review summarize the studies by stating that retention seems to help struggling learners in the year after retention, but those gains often quickly drop off after several years, while negative outcomes appear in the form of lower academic achievement, poor self-esteem and, as many studies show, dropping out of school in later years. However, “methodological issues plague much of this research,” and there is a question about how retention may differently affects different types of students, since it occurs most often in the case of minority males from low socioeconomic backgrounds.

Related Bills:

HB 74a *Science of Teaching Reading Requirement*
HJM 21 *Improve Teacher Preparation Programs*
HJM 27 *Study & Draft of Literacy Law for NM*