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SENATE BILL 2

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

INTRODUCED BY

John Arthur Smith and Nora Espinoza

AN ACT

RELATING TO EDUCATION; LIMITING GRADE PROMOTIONS; MAKING  
EXCEPTIONS; PROVIDING FOR REMEDIATION PROGRAMS AND INTENSIVE  
INTERVENTIONS; PROVIDING THAT A STUDENT WHO IS NOT PROFICIENT  
IN READING AT THE END OF GRADE THREE MAY NOT BE PROMOTED TO  
GRADE FOUR; PROVIDING THAT A STUDENT MAY BE HELD BACK ONLY  
ONCE; 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Chapter 33, Section 7, as amended) is repealed and a new  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:

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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;

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1 (d) parent; and

2 (e) student advocate chosen by the  
3 student or parent.

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

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

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

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

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

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

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

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1 indigent according to guidelines established by the department,  
2 the school district, locally chartered charter school and  
3 state-chartered charter school shall bear those costs.

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

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

25 G. Using data from the 2010-2011 and 2011-2012

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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 2012-2013 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

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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 kindergarten through grade  
7 eight, grade promotion and retention decisions at the end of  
8 the school year shall be based on a student's academic  
9 proficiency, as measured by statewide standards-based  
10 assessments, as follows:

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

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

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

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

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

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

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

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1 year in order to have additional time to achieve academic  
2 proficiency unless exempt from mandatory retention as  
3 prescribed in Subsection L of this section. The academic  
4 improvement plan shall be implemented immediately.

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

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

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

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

25 (2) demonstrates mastery on a teacher-

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1 developed portfolio that is equal to at least a proficient  
2 performance on the statewide standards-based assessments;

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

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

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

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