

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 53

50th Legislature, 2nd Session, 2012

Tracking Number: .188070.2

Short Title: Limit School Retentions Through Remediation

Sponsor(s): Representative Rick Miera and Others

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Date: February 2, 2012

Bill Summary:

Focusing on students in grades K-8, HB 53 repeals the current remediation and promotion provisions in the *Assessment and Accountability Act* in the *Public School Code* and creates a new section in the act to provide that a student who is not proficient in reading and math at the end of grades kindergarten through grade 8 be provided with intensive remediation, including assessment and intervention.

HB 53 also defines a number of terms:

- **“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 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;
- **“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;
- **“grade level proficiency”** means a score on a school-district-approved standards-based assessment that is comparable among school districts statewide;
- **“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 classroom teacher;
- **“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, response to intervention as defined in Section 22-13-6 NMSA 1978 and department rule;
- **“parent”** includes a guardian or other person having custody or control of a school-age person;

- **“remediation programs”** includes summer school, extended day or week programs, tutoring, progress-based monitoring, and other research-based models for student improvement;
- **“school district”** includes both a public school district and a charter school;
- **“school-district-approved assessment”** means a student assessment approved by the local superintendent;
- **“small groups”** shall consist of no fewer than five students and no more than 10 students;
- **“student assistance team”** means a group consisting of a student’s:
 - teacher;
 - school counselor;
 - school administrator;
 - parent; and
 - if the student or parent wishes, a student advocate chosen by the student or parent; and
- **“valid and reliable assessments”** means assessments that:
 - are appropriate to targeted populations;
 - provide predictive values;
 - are thoroughly tested, peer-reviewed, and accepted by authorities and practitioners in the field; and
 - are aligned with common core standards.

Among its provisions, HB 53 includes these requirements:

- For students who do not demonstrate grade-level proficiency in reading and math, local school districts must provide special instructional assistance through approved intervention and remediation programs and academic improvement programs that have demonstrated effectiveness.
- Intervention and remediation programs, academic improvement programs, and promotion policies must be aligned with school-district-approved, valid and reliable assessment results, and with state standards.
- Each student must be evaluated with school-district-approved assessments to determine the extent of the student’s reading and mathematics ability.
- School-district-approved assessments must be given, and, if students do not demonstrate grade-level proficiency, academic improvement plans must be implemented as follows:
 - at the beginning of the school year, school districts shall administer a school-district-approved assessment to students enrolled in kindergarten. The assessment shall screen students for reading and mathematics skills, including phonological awareness, letter recognition, and oral language skills;

- at the beginning of the school year, school districts shall administer a school-district-approved assessment to students enrolled in first through eighth grades. The assessment shall measure the students' acquisition of reading and mathematics skills, including phonological awareness, phonics, spelling, reading fluency, vocabulary, and comprehension; and
 - no later than the end of the first grading period each year, the parent of a student who has not achieved grade-level proficiency in reading or math must be notified in writing; and a conference must be held to discuss strategies to help the student each proficiency, including available intervention and remediation programs. The deficiencies and strategies must be explained to the parent; a written intervention plan must be developed, including time lines, academic expectations, and the measurements to be used to verify that the student has overcome the academic deficiencies; and the intervention and remediation programs and academic improvement plan must be implemented immediately.
- Using data from school year 2011-2012 and school year 2012-2013, each public school shall establish baseline assessment data on reading and mathematics grade-level proficiency for all students.
 - Regarding promotion and retention decisions, if a student:
 - has achieved grade-level proficiency, the student shall enter the next higher grade;
 - has not achieved grade-level proficiency, the student shall participate in the required level of remediation. Upon certification by the school district that the student has achieved grade-level proficiency, the student shall enter the next higher grade; or
 - has not achieved grade-level proficiency after completion of the prescribed intervention and remediation program after consultation with the parent and upon the recommendation of the teacher and school principal, the student shall either be:
 - retained in the same grade for no more than one school year with an academic improvement plan developed by the student assistance team to achieve grade-level proficiency; 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 grade with an academic improvement plan.
 - This plan must be developed by the student assistance team; must be designed to address specific reading and mathematics deficiencies, including time lines and monitoring activities; must include an alternate program; and must be implemented immediately.
 - If the student promoted through parental waiver still fails to achieve grade-level proficiency, despite an evaluation and an intervention and remediation program different from the previous year's, that student must be retained in the same grade for no more than one year — unless the student is exempt from retention, as described below.

- also, a student who does not demonstrate grade-level proficiency for two successive school years must be referred to the student assistance team for placement in an alternative program designed by the district and filed with the Public Education Department (PED).
- A student is exempt from retention if the student:
 - scores at least at the 50th percentile on a school-district-approved norm-referenced assessment or at the proficient level on an alternative school-district-approved criterion-referenced assessment;
 - demonstrates mastery on a teacher-developed portfolio that is equal to at least a proficient performance on the statewide standards-based assessments;
 - shows sufficient academic growth by meeting acceptable levels of academic performance specified by the school district;
 - is an English language learner who is proficient in a language other than English on a valid and reliable reading assessment in that language or who has had less than two years of instruction in English for speakers of other languages; or
 - is a student with a disability who shall be assessed, promoted, or retained in accordance with the provisions of the student's individualized education program.

Finally, in other provisions, HB 53 requires that:

- in general, the parent assume the cost of summer school and extended day intervention and remediation programs; however, if the parent is determined to be indigent according to guidelines established by the department, the school district bears those costs; and
- promotion and retention decisions affecting a student enrolled in special education be made in accordance with the provisions of the individual educational plan established for that student.

Fiscal Impact:

HB 53 does not contain an appropriation.

Fiscal Issues:

The appropriation to the State Equalization Guarantee Distribution (or Public School Funding Formula) in House Bill 3a, *Education Appropriation Act*, includes \$7.5 million to support early reading initiatives of school districts.

According to the PED bill analysis:

- the Executive budget recommendations include approximately \$2.9 million to support early identification and support of struggling readers;
- these funds will be used to support interventions for struggling readers, reading coaches, and district level training on effective reading instruction;

- with approximately 108,000 students in grades K-3, PED plans to procure and provide a formative assessment tool for use with all students;
- current formative assessment tools on the market range from \$1.00/student to upwards of \$50.00/student;
- because intervention support will be included in a separate portion of the budget, PED anticipates spending \$2.0 million annually to screen students in grades K-3;
- PED proposes that interventions aligned to student data be used to support struggling readers;
- intervention must be systemic and start well before third grade if we expect increased student achievement;
- in addition to screening and intervention, PED will use the remaining funds to support district leadership with training on effective reading instruction and how to use formative assessment data to drive interventions;
- \$800,000 will be used for district training; and
- PED proposes hiring 1 full-time equivalent at approximately \$88,000 to guide the work at PED and support districts as they implement the screening tool and align interventions.

The PED bill analysis also states that:

- \$9.1 million would be needed to provide for school district costs;
- after students are screened, PED will require districts to intervene with the student's struggling the most;
- PED anticipates that 24,000 students (6,000 /grade level K-3) will need additional reading support;
- PED requests \$120/students, for a total of \$2,800,000;
- \$6,300,000 will be used to support reading coaches at the district level that will support schools with implementation of the formative assessment tool and interventions based on \$85,000 for one reading coach for six elementary schools. Districts with fewer than six elementary schools could be distributed through a regional entity, such as a regional education cooperative, to provide coaching support to multiple elementary schools.

According to the Fiscal Impact Report of the Legislative Finance Committee:

- the PED estimates are only for an early intervention and remediation policy directed to kindergarten through third grade students who are struggling with reading;
- the estimates do not address grades five through eight reading or kindergarten through eighth grade math;
- based on the 2011 New Mexico Standards-based Assessment Data, only 49.8 percent of students statewide scored proficient or above on reading, and only 41.8 percent on math; and
- as PED stated, it is likely that an intervention and remediation policy targeted to kindergarten through eighth grade reading and math would cost more to implement than a K-3 reading intervention policy.

Substantive Issues:

Student Proficiency in Math and Reading

The data from the 2011 National Assessment of Educational Progress (NAEP), known as the Nation's Report Card, show New Mexico fourth-graders performing somewhat better in math than in reading: 30 percent proficient in math versus 21 percent proficient in reading. In neither case, according to NAEP, does the percentage differ significantly from that in 2009 (26 percent and 20 percent, respectively). However, NAEP scores reflect only a sample of students statewide; whereas the state's standards-based assessment, given to all students, presents a more comprehensive view – and a different impression.

A summary of 2011 Adequate Yearly Progress (AYP) data provided by PED show that math and reading are of equal concern when academic proficiency of New Mexico students is examined. These data reveal that:

- 42 percent of New Mexico students are at or above proficiency in math;
- 50 percent of New Mexico students are at or above proficiency in reading;
- 53 percent of New Mexico third-graders are at or above grade level in reading;
- 52 percent of New Mexico third-graders are at or above grade level in math;
- 47 percent of New Mexico fourth-graders are at or above grade level in reading; and
- 44 percent of New Mexico fourth-graders are at or above grade level in math.

Promotion and Retention

According to the Education Commission of the States, for many years, American schools commonly practiced what is called “social promotion,” the advancement of struggling students from one grade level to the next with the intent of keeping children in the same peer group, in the hopes that students would reach grade-level achievement levels in a subsequent school year. However, as a part of states’ standards, assessment, and accountability initiatives starting in the mid-1990s, states and districts began to implement bans on social promotion, intending to keep children in the same grade level until they could demonstrate mastery of grade-level skills and knowledge. While at first glance retention may seem to be a reasonable means of assuring that students gain grade-level proficiency, a number of research studies have indicated that neither retention nor social promotion positively influences students.

Research on retention proposes that:

- minority, male, urban, and poor students are disproportionately more likely to be retained;
- retention increases students’ likelihood of eventually dropping out;
- retention lowers self-esteem and self-confidence; and
- retained students are likely to remain below grade-level proficiency levels.

Critics of social promotion, however, counter that:

- socially promoted students, when they do not drop out, graduate with insufficient skills and knowledge, leaving them inadequately prepared for employment and postsecondary education;
- social promotion devalues the high school diploma; and
- social promotion suggests to students that hard work is not necessary to achieve goals.

When considering promotion/retention policies, policymakers should examine:

- Is teacher quality an issue? Students under inadequately prepared teachers will find greater difficulty meeting the high grade-level standards recently adopted in many states.
- Are teachers sufficiently trained in identifying student learning problems and providing suitable interventions?
- Are there early interventions to address academic difficulties before students get far behind in their skills? By the time the results of the statewide assessment are released, it often is too late to implement an intervention plan.

States and districts should consider as vital components of retention policies an early identification and individualized intervention program, after-school or Saturday tutorials, and targeted summer school programs. Without quality time focused on students' individual needs, it is unlikely that struggling students will attain grade-level proficiency.

Practices such as looping (in which students remain with the same teacher and classmates for more than one academic year), smaller class size, and multi-age classrooms also have been proposed as means to help teachers identify struggling children and provide them with individualized instruction. However, the success of these latter three approaches indisputably rests on teacher quality; students in a small class or spending multiple years with an ineffective teacher will not make adequate progress toward grade-level proficiency.

The March 2004 report by the Consortium on Chicago School Research, *Ending Social Promotion: The Effects of Retention* addresses the question whether retaining low-achieving students helps. "The answer to this question," the report says, "is definitely no. In the third grade, there is no evidence that retention led to greater achievement growth two years after the promotional gate, and in sixth grade, we find significant evidence that retention was associated with lower achievement growth." This study is based on the retention practices of Chicago Public Schools between 1996 and 2004, when between 7,000 and 10,000 third, sixth, and eighth grade students were retained.

Background:

In considering the issue of social promotion, the Legislative Education Study Committee heard testimony and research reports indicating that neither social promotion nor retention alone is likely to be effective. According to the US Department of Education (USDE), "the results of both policies are unacceptably high dropout rates, especially for poor and minority students, and inadequate knowledge and skills for students." Instead, researchers agree that, whether retained or promoted, students not mastering the material at a given grade level must be identified early

and receive additional help — tutoring, extended classes, transitional classes, intensive reading instruction, alternative programs, summer school — if they are to achieve at the required level.

Under current law:

- A student in grades 1 through 7 who is not academically proficient after completing a prescribed remediation program may be:
 - 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.
- 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 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 work force or a postsecondary educational institution.

Related Bills:

HB 54 *Limit School Retentions Through Intervention* (Identical bill to HB 69 and SB 96)

HB 69 *Limit School Retentions Through Intervention* (Identical bill to HB 54 and SB 96)

SB 50 *Limit School Retentions Through Remediation* (Identical to HB 53)

SB 96 *Limit School Retentions Through Interventions* (Identical bill to HB 54 and HB 69)