

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 257

51st Legislature, 1st Session, 2013

Tracking Number: .190453.6

Short Title: Academic Success Through Remediation Act

Sponsor(s): Representatives Mary Helen Garcia and Jimmie C. Hall and Others

Analyst: LaNysha Adams

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Bill Summary:

Focusing on students in grades K-8, HB 257 repeals the current remediation and promotion provisions in the *Assessment and Accountability Act* in the *Public School Code* and adds a new section to create the *Academic Success Through Remediation Act*.

Among its provisions, the new act provides that:

- a student who is not proficient in reading in kindergarten, or first or second grade, be provided with intensive remediation;
- a student who is not proficient in reading at the end of third grade, with certain exceptions, be retained with intensive remediation;
- 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;
- assessment, intervention, and remediation programs to address deficiencies be identified between grades K-8; and
- exceptions for retention and promotion be made, when necessary.

HB 257 defines a number of terms:

- **“academic proficiency”** means a score on the statewide standards-based assessment that is higher than the lowest level established by the Public Education Department (PED);
- **“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 in reading;
- **“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;
- **“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;
- **“proficient in reading”** means a score on the statewide standards-based assessment that is higher than the lowest level established by PED;
- **“reading improvement plan”** means a written document developed by the student assistance team 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 kindergarten, one, and two, 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;

- **“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 locally chartered or state-chartered charter school;
- **“screening assessment”** means the assessment that measures the acquisition of reading skills, including but not limited to phonological awareness, phonics, reading fluency, vocabulary, and comprehension approved by PED;
- **“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.

Other provisions of HB 257 require that public school districts:

- assess and determine each student’s reading ability using:
 - in grades K-2, the screening assessment; and
 - in grades 3-8, the statewide standards-based assessment;
- include percentages of academically proficient students in reading listed by school and charter school in its annual accountability report required in Section 22-2C-11 NMSA 1978;
- use data from school year 2013-2014 to establish baseline assessment data on reading proficiency for students in grades K-3, which includes levels of performance in reading based on the screening assessment to determine when a student must be provided with an intervention and remediation program;
- effective beginning with school year 2014-2015, approve and bear the cost of intervention, 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;

- beginning with school year 2013-2014, notify the parents of students in grades K-3 who are not proficient in reading at the end of the first grading period that the students will be provided with intensive targeted instruction;
- beginning with school year 2014-2015, oblige students who are not proficient in reading at the end of third grade to participate in the required level of remediation before the beginning of the student's next school year;
- depending on the availability of funds, bear the cost of summer school and extended day intervention and remediation programs for grades 9-12, when PED determines that parents cannot afford to pay the cost;
- refer students in grades 1-8, who do not demonstrate reading proficiency for two successive school years, to the student assistance team for placement in an alternative program designed by the district and file the alternative program plans with PED;
- make promotion and retention decisions for students enrolled in special education according to the provisions established in the student's individual educational plan (IEP); and
- exempt a student from retention if the student:
 - scores at least at the 50th percentile on a PED-approved, norm-referenced test, or at the proficient level on an alternative school-district-approved, criterion-referenced assessment;
 - demonstrates reading proficiency on a teacher-developed portfolio;
 - shows sufficient growth by meeting PED-specified levels of reading proficiency;
 - is an English language learner who:
 - demonstrates proficiency in a language other than English on a valid and reliable reading assessment;
 - has had less than two years of instruction in English for speakers of other languages;
 - is a student with a disability who shall be assessed, promoted, or retained according to the provisions established in the student's IEP; and
 - is a student who has already been retained once in kindergarten, first, or second grade.

HB 257 contains permissive language that:

- beginning with school year 2013-2014, may allow public school districts to retain a student who is not proficient in reading at the end of grades K-2 pursuant to an established reading improvement plan; and
- allow parents to petition retention decisions if the student has attended school for at least 95 percent of the instructional time during the school year and 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.

For students in grades K-3, HB 257 requires that public schools:

- adopt and align intervention and remediation programs, reading improvement programs, and promotion policies with the screening assessment results and the Common Core State Standards (CCSS);
- administer the screening assessment for reading skills to all students at the beginning of the school year;
- provide the screening assessment in the student's first and second languages for English language learners, if appropriate;
- provide intensive targeted instruction for students in grades K-3 who are not proficient in reading at the end of the first grading period and for parents to be notified; and
- beginning with school year 2014-2015, make grade promotion and retention decisions based on the student's reading proficiency by the end of third grade.

Regarding promotion and retention decisions, if at the end of third grade a student has:

- achieved reading proficiency, the student shall enter next highest grade;
- not achieved reading proficiency, the student shall participate in the required level of remediation before the beginning of the student's next school year, however, certification by the school district that the student has achieved reading proficiency, the student shall enter the next highest grade;
- not achieved reading proficiency after completion of the prescribed intervention and remediation program and upon 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 a reading improvement plan that is different from the previous year's developed by the student assistance team to help the student achieve reading proficiency; or
 - promoted to the next grade if the parent refuses retention and signs a waiver indicating the parent's refusal to allow the student to participate in the prescribed intervention.

For students in grades 4-8, HB 257 requires that public schools:

- align intervention and remediation programs, reading improvement programs, and promotion policies with school-district-approved, valid and reliable assessment results, and with state standards;
- notify parents in writing no later than the end of the second grading period of each school year in grades 4-8 that their students are not academically proficient and that a conference with the student assessment team be held to discuss strategies, including intervention and remediation programs available to assist the student in becoming academically proficient;
- present the student's academic deficiencies and available strategies, intervention, and remediation programs to parents orally and in writing;
- develop a reading improvement plan for students who are not academically proficient that contains timelines, academic expectations, and the measurements that will be used to verify that a student has overcome academic deficiencies;
- provide the parent of a student who is not academically proficient with specific strategies to use in helping the student achieve reading proficiency; and

- immediately implement the intervention, remediation programs, and reading improvement plans for students who are not proficient in reading.

Regarding promotion and retention decisions, if at the end of grades 4-8, a student:

- has achieved reading proficiency, the student shall enter next highest grade;
- has not achieved reading proficiency, the student shall participate in the required level of remediation with an academic proficiency plan:
 - This academic proficiency plan must be developed by the student assistance team; must be designed to address specific reading deficiencies, including time lines and monitoring activities; and must be implemented immediately.
- has not achieved reading proficiency for two successive school years must be referred to the student assistance team for placement in an alternative program that must be implemented immediately and filed with PED.

Fiscal Impact:

HB 257 does not contain an appropriation.

Fiscal Issues:

For FY 14, HB 3, as amended by the House Education Committee, includes \$8.5 million in the State Equalization Guarantee (SEG) distribution for an Early Reading Initiative.

According to the PED bill analysis, a \$13.5 million appropriation would be needed if HB 257 is enacted:

To PED

- \$4.0 million to support interventions for struggling readers, reading coaches, support for interventions, and district level training on effective reading instruction; and

To Public School Districts

- \$9.5 million to support district and school administrators, teachers, reading coaches, and parents with professional development on:
 - evidence-based reading instruction and intervention aligned with Common Core State Standards;
 - using formative assessment data to drive instruction; and
 - strategies for parents to support students’ reading acquisition at home.

The Legislative Finance Committee’s (LFC) Fiscal Impact Report (FIR) suggests 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.

The FIR also indicated that:

- PED has not provided any estimate of potential costs, or savings, including the number of children that could potentially be affected by the changes of HB 257, if enacted;
- while the Legislature appropriated \$8.5 million for a statewide early reading initiative to PED for FY 13, the funds were competitively distributed through the New Mexico Reads to Lead! grant application process (see “Background,” below); and
- the funds distributed to schools that received grants for the New Mexico Reads to Lead! initiative did not appear to be targeted to the state’s lowest performing students nor the state’s most at-risk students.

If HB 257 is enacted, the FIR states that:

- based on testimony received from PED during previous legislative sessions, districts receive substantial federal and SEG funds that can be reprioritized to support improvement strategies for struggling readers; and
- it would cost \$25.9 million to provide K-3 Plus to the bottom 20 percent of K-3 students, which is approximately \$5.8 million per grade.

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.

Substantive Issues:

HB 257, if enacted:

- would only allow parents to petition retention decisions if their child has attended school for at least 95 percent of the instructional time during the school year, among other requirements; and
- would remove the provisions in current law that allow any parent to sign a waiver indicating the parent’s desire that a student be promoted to the next higher grade (see “Background,” below).

According to the FIR, if HB 257 is enacted:

- only 8.0 percent of third graders would be subject to retention; and
- for every child retained, without additional appropriations to cover the student, the school district will have to absorb the costs of an additional year of school.

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.

Background:

Current Law

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.” 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:
 - 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.

The New Mexico Reads to Lead! Early Reading Initiative

During the 2012 interim, the LESL heard testimony about PED’s use of funding for reading initiatives statewide, including:

- the appropriation of \$8.5 million for FY 13 to support early reading initiatives, of which PED set aside:

- \$3.0 million for a common K-3 assessment to be used across all schools and districts in the state;
 - \$4.5 million for reading coaches and interventions for which districts could apply; and
 - \$1.0 million for professional development of teachers, coaches, and administrators focused on effective reading instruction and using data to drive instruction aligned with the CCSS;
- the funds provided to districts through the Reads to Lead! application process; and
 - a recently launched PED reading website with resources in both English and Spanish.

PED reported that of the 44 districts and charter schools that had applied, 13 received awards.

K-3 Reading Screening Assessment in New Mexico

According to information given by PED staff to the LESC during the 2012 interim, the Dynamic Indicators of Basic Early Literacy Skills (DIBELS) Next:

- is the tool selected for the state's K-3 reading screening assessment;
- replaces the current version of DIBELS and includes a series of research-based enhancements that increase the ease of use as well as the reliability and validity of the assessment;
- was used by 40 districts and 10 charter schools reported during school 2012-2013;
- results can be linked to targeted interventions from core reading programs such as *Treasures*, *Trophies*, and *Reading Street*; and
- offers an electronic version called mCLASS® that is administered on a mobile device and provides:
 - frequent progress monitoring;
 - instructional tools for teachers; and
 - reporting capabilities for teachers and administrators.

Reading Proficiency in New Mexico

Of the 75,792 students tested on the standards-based assessments in grades 3-5 in 2012, approximately:

- 52.4 percent of all third graders statewide are at or above proficiency in reading;
- 49.9 percent of all fourth graders statewide are at or above proficiency in reading; and
- 55 percent of all fifth graders statewide are at or above proficiency in reading.

Additionally, 2012 statewide standards-based assessments data reveal that:

- 68.5 percent of white third grade students, 66.4 percent of white fourth grade students, and 72.5 percent of white fifth grade students are at or above proficiency in reading;
- 48.8 percent of African-American third grade students, 50 percent of African-American fourth grade students, and 49 percent of African-American fifth grade students are at or above proficiency in reading;

- 47.8 percent of Hispanic third grade students, 45 percent of Hispanic fourth grade students, and 50.3 percent of Hispanic fifth grade students are at or above proficiency in reading;
- 74.3 percent of Asian third grade students, 75.5 percent of Asian fourth grade students, and 77.5 percent of Asian fifth grade students are at or above proficiency in reading;
- 36.3 percent of Native American third grade students, 34.5 percent of Native American fourth grade students, and 35.5 percent of Native American fifth grade students are at or above proficiency in reading;
- 44.8 percent of economically disadvantaged third grade students, 42.1 percent of economically disadvantaged fourth graders, and 47.2 percent of economically disadvantaged fifth graders are at or above proficiency in reading;
- 20.5 percent of third grade students with disabilities, 17 percent of fourth grade students with disabilities, and 18.3 percent of fifth grade students with disabilities are at or above proficiency in reading;
- 28.1 percent of third grade students who are currently classified as English language learners (ELLs), 18.7 percent of fourth grade students who are currently classified as ELLs, and 19.8 percent of fifth grade students who are currently classified as ELLs are at or above proficiency in reading; and
- 65.5 percent of third grade students who have exited ELL classification, 57.3 percent of fourth grade students who have exited ELL classification, and 61.1 percent of fifth grade students who have exited ELL classification are at or above proficiency in reading.

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.

Committee Referrals:

HEC/HJC

Related Bills:

SB 225 *Early Childhood Teacher Retention Project*
 SB 260a *Academic Success Through Remediation Act (Similar)*
 SB 380 *Compulsory Education for Children Age 4 & Up*
 SB 474 *School Intervention & Remediation Practices*
 SB 640 *Reading Proficiency Act*
 SJM 14 *Study New Approaches to Education Reform*