

SENATE EDUCATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 640

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

AN ACT

RELATING TO PUBLIC SCHOOLS; ENACTING THE READING PROFICIENCY  
ACT; REQUIRING BASELINE ASSESSMENT DATA ON READING PROFICIENCY  
FOR STUDENTS IN KINDERGARTEN THROUGH GRADE THREE; PROVIDING  
INTERVENTION AND DIFFERENTIATED REMEDIATION MEASURES FOR  
STUDENTS IN KINDERGARTEN THROUGH GRADE EIGHT WHO DO NOT  
DEMONSTRATE READING PROFICIENCY; REQUIRING REPORTING TO THE  
LEGISLATURE; REQUIRING SCHOOL DISTRICTS TO MAINTAIN STUDENT  
INTERVENTION FILES; AMENDING REMEDIATION AND PROMOTION POLICIES  
OF THE PUBLIC SCHOOL CODE TO CONFORM WITH THE READING  
PROFICIENCY ACT; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Public School Code is  
enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 6 of this  
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underscored material = new  
[bracketed material] = delete

1 act may be cited as the "Reading Proficiency Act".

2 SECTION 2. A new section of the Public School Code is  
3 enacted to read:

4 "[~~NEW MATERIAL~~] PURPOSE OF ACT.--The purpose of the  
5 Reading Proficiency Act is to ensure that students who  
6 experience difficulties with reading proficiency are provided  
7 multiple opportunities for early intervention and remediation  
8 in kindergarten through grade eight."

9 SECTION 3. A new section of the Public School Code is  
10 enacted to read:

11 "[~~NEW MATERIAL~~] DEFINITIONS.--As used in the Reading  
12 Proficiency Act:

13 A. "academic improvement plan" means a written  
14 document developed by the student assistance team that  
15 describes the specific reading standards required for a certain  
16 grade level that a student has not achieved and that prescribes  
17 intervention and differentiated remediation programs that have  
18 demonstrated effectiveness and can be implemented during the  
19 intensive targeted instruction within the school day or during  
20 summer school or extended day or week programs and with  
21 tutoring;

22 B. "intensive targeted instruction" means extra  
23 instruction in either small groups or as individuals that shall  
24 be no less than twenty minutes per day and five days per week  
25 or the equivalent;

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1           C. "intervention" means targeted instructional  
2 practice for individual students or small groups of students  
3 aligned with the results of a valid and reliable assessment or  
4 response to intervention;

5           D. "reading proficiency" means a score on a valid  
6 and reliable assessment that is higher than the lowest level  
7 established by the department;

8           E. "remediation programs" includes summer school,  
9 extended day or week programs, tutoring, progress-based  
10 monitoring and other research-based models for student  
11 improvement;

12           F. "school district" includes both a public school  
13 district and a locally chartered or state-chartered charter  
14 school;

15           G. "screening" means a district-determined  
16 assessment that is the same for all school districts, is  
17 approved by the department and that measures the acquisition of  
18 reading skills, including but not limited to phonological  
19 awareness, phonics, reading fluency, vocabulary and  
20 comprehension;

21           H. "student assistance team" means a group  
22 consisting of a student's:

- 23                   (1) teachers;
- 24                   (2) school counselor;
- 25                   (3) school administrator;

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- 1 (4) parent; and
- 2 (5) if the student or parent wishes, a student
- 3 advocate chosen by the student or parent; and

4 I. "valid and reliable assessments" means  
5 assessments that are:

- 6 (1) school district-approved;
- 7 (2) appropriate to targeted populations; and
- 8 (3) thoroughly tested, peer-reviewed and
- 9 accepted by authorities and practitioners in the field."

10 SECTION 4. A new section of the Public School Code is  
11 enacted to read:

12 "[NEW MATERIAL] KINDERGARTEN THROUGH GRADE THREE--BASELINE  
13 ASSESSMENT DATA--INTERVENTION--REMEDICATION.--

14 A. The screening shall be given at the beginning of  
15 the school year to students enrolled in kindergarten through  
16 grade three. The screening may be administered in a language  
17 other than English based on the student's need.

18 B. Each public school shall use the screening  
19 results to establish baseline assessment data on reading  
20 proficiency for students in kindergarten through grade three.

21 C. For students in kindergarten through grade  
22 three, prescribed intervention and remediation programs and  
23 differentiated academic improvement programs shall be adopted  
24 and aligned with the screening results and be aligned with the  
25 state standards for each grade level and subject area pursuant

1 to Section 22-13-1.6 NMSA 1978.

2 D. Beginning with the 2013-2014 school year, school  
3 districts shall approve prescribed intervention and  
4 differentiated remediation programs and differentiated academic  
5 improvement programs that have demonstrated effectiveness in  
6 providing special instructional assistance to students in  
7 kindergarten through grade three who do not demonstrate reading  
8 proficiency.

9 E. If the screening results for a student in  
10 kindergarten or grades one through three indicate that a  
11 student has not achieved reading proficiency, the student  
12 assistance team shall develop, by the eightieth day of the  
13 school year, a reading improvement plan that contains an  
14 initial identification of areas of need and recommendations for  
15 differentiated remediation. The reading improvement plan shall  
16 delineate the areas in which the student needs prescribed  
17 intervention and differentiated remediation, contain specific  
18 strategies for a parent to use in helping the student achieve  
19 reading proficiency and be provided to the parent.

20 F. Students who have a reading improvement plan  
21 shall immediately receive differentiated intensive targeted  
22 instruction. If a parent refuses to allow the student to  
23 participate in any prescribed intervention or differentiated  
24 remediation, the school district shall provide an appropriate  
25 form that must be signed by the parent that indicates the

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1 parent's refusal to allow the student to participate in the  
2 prescribed intervention or differentiated remediation."

3 SECTION 5. A new section of the Public School Code is  
4 enacted to read:

5 "[NEW MATERIAL] GRADES FOUR THROUGH EIGHT--  
6 INTERVENTION--REMEDICATION--STUDENT INTERVENTION FILE.--

7 A. To assess the reading proficiency of students in  
8 grades four through eight, school districts shall use a valid  
9 and reliable assessment.

10 B. In grades four through eight, prescribed  
11 intervention and differentiated remediation programs, academic  
12 improvement programs and promotion policies shall be aligned  
13 with valid and reliable assessment results and be aligned with  
14 the state standards for each grade level and subject area  
15 pursuant to Section 22-13-1.6 NMSA 1978.

16 C. If a student in grade four through eight does  
17 not demonstrate reading proficiency, a parent shall be notified  
18 in writing no later than the end of the first grading period of  
19 the school year and a conference with the student assistance  
20 team shall be held to discuss strategies, including prescribed  
21 intervention and differentiated remediation programs available  
22 to assist the student in achieving reading proficiency. At the  
23 meeting, the areas in which the student needs improvement and  
24 the available strategies, prescribed intervention and  
25 differentiated remediation programs shall be presented orally

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1 and in writing to the parent, and an academic improvement plan  
2 shall be developed that contains time lines, differentiated  
3 instruction, academic expectations and measurements to be used  
4 to verify that a student is achieving reading proficiency. The  
5 parent shall be provided with specific strategies to use in  
6 helping the student achieve reading proficiency. The school  
7 shall immediately implement prescribed intervention and  
8 differentiated remediation programs and the academic  
9 improvement plan for the remainder of the school year.

10 D. For each student who does not demonstrate  
11 reading proficiency in grades four through eight, the school  
12 shall maintain a student intervention file that contains a copy  
13 of the written notice to the parent and a description of the  
14 implemented intervention, differentiated remediation programs  
15 and differentiated academic improvement plan and any promotion  
16 or retention recommendations. The student intervention file  
17 shall be maintained as part of the student's permanent record  
18 to help successive teachers and schools meet the student's  
19 academic needs through further intervention, remediation and,  
20 if necessary, retention."

21 SECTION 6. A new section of the Public School Code is  
22 enacted to read:

23 "[NEW MATERIAL] REPORTING.--

24 A. By September 30 of each year, each school  
25 district shall provide to the department a professional

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1 development plan that includes proposals for teachers to  
2 receive professional development to adopt effective  
3 instructional methodologies and strategies in the areas of  
4 reading, English language development or English as a second  
5 language. By May 15 of each year, each school district shall  
6 include in its annual accountability report:

7 (1) the number and percentage of students  
8 identified as requiring intervention;

9 (2) the number and percentage of students who  
10 received intervention and differentiated remediation and:

11 (a) achieved reading proficiency within  
12 the school year; or

13 (b) did not achieve reading proficiency  
14 within the school year, were recommended for retention and: 1)  
15 were retained in the same grade; or 2) were not retained in the  
16 same grade due to a parental waiver;

17 (3) reading proficiency data for students who  
18 did not achieve reading proficiency and were promoted to the  
19 next higher grade due to a parental waiver; and

20 (4) student assistance team promotion and  
21 retention decisions for students who previously were promoted  
22 to the next higher grade due to a parental waiver.

23 B. The department shall report to the legislative  
24 education study committee on alternate months during the  
25 interim about the accountability reports received, programs

1 adopted and implemented, data maintained and goals established  
2 pursuant to the Reading Proficiency Act."

3 SECTION 7. Section 22-2C-6 NMSA 1978 (being Laws 1986,  
4 Chapter 33, Section 7, as amended) is amended to read:

5 "22-2C-6. ~~[REMEDATION PROGRAMS]~~ PROMOTION AND RETENTION  
6 POLICIES--RESTRICTIONS.--

7 A. ~~[Remediation programs, academic improvement~~  
8 ~~programs and]~~ Promotion and retention policies shall be aligned  
9 with ~~[school-district-determined]~~ valid and reliable assessment  
10 results. ~~[and requirements of the state assessment and~~  
11 ~~accountability program.~~

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

22 C. ~~The cost of summer and extended-day remediation~~  
23 ~~programs and academic improvement programs offered in grades~~  
24 ~~nine through twelve shall be borne by the parent; however,~~  
25 ~~where parents are determined to be indigent according to~~

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1 ~~guidelines established by the department, the school district~~  
2 ~~shall bear those costs.~~

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

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

20 ~~F.]~~ B. At the end of grades one through seven,  
21 three options are available, [~~dependent~~] depending on a  
22 student's [~~academic~~] reading proficiency:

23 (1) the student [~~is academically proficient~~]  
24 has achieved reading proficiency and shall enter the next  
25 higher grade;

1 (2) the student [~~is not academically~~  
2 ~~proficient~~] has not achieved reading proficiency and shall  
3 participate in [~~the required level of~~] remediation pursuant to  
4 the Reading Proficiency Act. Upon certification by the school  
5 district that the student [~~is academically proficient~~] has  
6 achieved reading proficiency, the student shall enter the next  
7 higher grade; or

8 (3) the student [~~is not academically~~  
9 ~~proficient~~] has not achieved reading proficiency after  
10 completion of the [~~prescribed~~] differentiated remediation  
11 [~~program~~] and upon the recommendation of the teacher and school  
12 principal shall either be:

13 (a) retained in the same grade for no  
14 more than one school year with an academic improvement plan  
15 developed by the student assistance team in order to [~~become~~  
16 ~~academically proficient~~] achieve reading proficiency, at which  
17 time the student shall enter the next higher grade; or

18 (b) promoted to the next grade if the  
19 parent refuses to allow the child to be retained pursuant to  
20 Subparagraph (a) of this paragraph. In this case, the parent  
21 shall sign a waiver indicating the parent's [~~desire~~] intention  
22 that the student be promoted to the next higher grade with [~~an~~]  
23 a differentiated academic improvement plan designed to address  
24 specific [~~academic deficiencies~~] needs. The academic  
25 improvement plan shall be developed by the student assistance

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1 team outlining time lines and monitoring activities to ensure  
2 academic progress [~~toward overcoming those academic~~  
3 ~~deficiencies~~]. Students failing to [~~become academically~~  
4 ~~proficient~~] achieve reading proficiency at the end of that year  
5 as measured by grades, performance on school district  
6 assessments and other measures identified by the school  
7 district shall be retained in the same grade for no more than  
8 one year in order to have additional time to achieve [~~academic~~]  
9 reading proficiency.

10 [G-] C. At the end of the eighth grade, a student  
11 who [~~is not academically proficient~~] has not achieved reading  
12 proficiency shall be retained in the eighth grade for no more  
13 than one school year to [~~become academically proficient~~]  
14 achieve reading proficiency, or if the student assistance team  
15 determines that retention of the student in the eighth grade  
16 will not assist the student to [~~become academically proficient~~]  
17 achieve reading proficiency, the team shall design a high  
18 school graduation plan to meet the student's needs for entry  
19 into the work force or a post-secondary educational  
20 institution. If a student is retained in the eighth grade, the  
21 student assistance team shall develop a specific academic  
22 improvement plan that clearly delineates the student's  
23 [~~academic deficiencies~~] needs and prescribes a [~~specific~~]  
24 targeted differentiated remediation plan. [~~to address those~~  
25 ~~academic deficiencies~~].

1           ~~H.~~ D. A student who does not [~~demonstrate~~  
2 ~~academic~~] achieve reading proficiency for two successive school  
3 years shall be referred to the student assistance team for  
4 placement in an alternative program designed by the school  
5 district. Alternative program plans shall be filed with the  
6 department.

7           ~~F.~~ E. Promotion and retention decisions affecting  
8 a student enrolled in special education shall be made in  
9 accordance with the provisions of the individual educational  
10 plan established for that student.

11           F. A student shall be exempt from the provisions of  
12 Subsections B through D of this section if the student:

13                   (1) scores at least at the fiftieth percentile  
14 on a department-approved, norm-referenced assessment or at the  
15 proficient level on an alternative school-district-approved,  
16 criterion-referenced assessment;

17                   (2) is an English language learner who is  
18 proficient in a language other than English on a valid and  
19 reliable reading assessment or who has had less than two years  
20 of instruction in English for speakers of other languages;

21                   (3) is a student with a disability who shall  
22 be assessed, promoted or retained in accordance with the  
23 provisions of the student's individualized education program;

24 or

25                   (4) is a student who has already been retained

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1 once in kindergarten or first or second grades.

2 [~~J-~~] G. For the purposes of this section:

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

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

13 (3) "educational plan for student success"  
14 means a student-centered tool developed to define the role of  
15 the academic improvement plan within the public school and the  
16 school district that addresses methods to improve student  
17 learning and success in school and that identifies specific  
18 measures of a student's progress; and

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

21 (a) teachers;

22 (b) school counselor;

23 (c) school administrator; [~~and~~]

24 (d) parent; and

25 (e) if the student or parent wishes, a

