

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: CS/SB 724

52nd Legislature, 1st Session, 2015

Tracking Number: 200807.6

Short Title: Reading Success Act and Grade Retention

Sponsor(s): Senator Gay G. Kernan

Analyst: Christina McCorquodale

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**SENATE FINANCE COMMITTEE SUBSTITUTE
FOR SENATE BILL 724**

Bill Summary:

Focusing on students in grades K-8, CS/SB 724 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 *Reading Success Act*.

Among its provisions, the new act requires:

- a student who is not proficient in reading in kindergarten, first, or second grade be provided with intensive remediation and subject to retention based on the student assistance team's recommendation;
- 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;
- exceptions for retention and promotion be made, when necessary;
- school districts to include certain reading proficiency data in their annual accountability reports; and
- school districts to maintain student intervention files.

CS/SB 724 defines a number of terms:

- **“English language learner”** (ELL) means a student whose first or heritage language is not English and who is unable to read, write, speak, or understand English at a level comparable to grade-level English-proficient peers and native English speakers;
- **“intensive targeted instruction”** means extra instruction for individual students or small groups of students that shall be no less than 20 minutes per day five days per week or the weekly equivalent;

- **“intervention”** means intensive targeted instruction for individual students or small groups of students aligned with the results of a valid and reliable assessment and, if applicable, Response to Intervention (RtI);¹
- **“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 intervention and remediation that have demonstrated effectiveness and may include, if appropriate, retention in kindergarten and first and second grades;
- **“reading proficiency”** or **“proficient in reading”** means a state score on the statewide standards-based assessment or reading assessment or reading screening assessment that is higher than the lowest level established by the Public Education Department (PED);
- **“reading screening assessment”** means a school-district-determined and developmentally appropriate assessment that measures the acquisition of reading skills, including phonological awareness, phonics, reading fluency, vocabulary, and comprehension. For ELLs, the screening shall be a school-district-determined and developmentally appropriate English language assessment that is the same for all school districts and approved by PED (see **“Technical Issues,”** below);
- **“remediation”** 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 school district and a locally chartered or state-chartered charter school;
- **“student assistance team”** (SAT) means a collaborative 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 parent; and
- **“valid and reliable assessment”** means an assessment that is:
 - appropriate to targeted populations; and
 - thoroughly tested, peer-reviewed and accepted by authorities and practitioners in the field.

CS/SB 724 contains a variety of provisions according to multiple grade level configurations, as follows:

For Students in Grades K-3:

- effective beginning with school year 2015-2016, school districts must provide reading improvement plans that include intervention and remediation for students in grades K-3 who have not demonstrated reading proficiency;
- at the beginning of grades K-3, the intervention and reading improvement plans and promotion policies must be adopted and aligned with the reading screening assessment results and state standards;
- districts are required to administer the reading screening assessment in grades K-3 and, if appropriate, the assessment may be administered in the student’s first or second language. If a student does not demonstrate reading proficiency, a reading improvement plan will

¹ According to the Public Education Department, Response to Intervention is a systematic, data-based assessment and intervention framework that seeks to prevent academic and behavioral difficulty for all students through high-quality, research-based instruction, early intervention, and frequent authentic assessment of students’ progress. There are three tiers: Tier 1 is the Universal/Core instruction of the classroom, Tier 2 is targeted/supplemental group interventions, and Tier 3 is strategic/intensive, individualized intervention.

be implemented for that student. The process for assessing students in grades K-3 includes:

- students in kindergarten must be administered the reading screening assessment by the end of the first nine weeks of the school year;
 - students in grades 1-3 must be administered the reading screening assessment at the beginning of the school year;
 - if the reading screening assessment results for a student in grades K-3 indicate that a student is not proficient in reading, the SAT must develop a reading improvement plan and notify the parent that their child will be provided with intensive targeted instruction; and
 - if a parent refuses to allow his or her child to participate in any prescribed intervention or remediation, the district must provide that parent with a form indicating in writing, the parent's refusal;
- effective beginning with school year 2015-2016, a student who is not proficient in reading at the end of kindergarten, first, or second grade may be retained based on the SAT recommendation, and if a parent refuses retention, the district must provide that parent with a form indicating in writing, the parent's refusal;
 - effective beginning with school year 2016-2017, at the end of grade 3, if a student is not proficient in reading, grade promotion and retention decisions for that student will be based upon the determination the student is:
 - proficient in reading and shall enter grade 4;
 - not proficient in reading and may participate in a remediation program that may be available before the beginning of the next school year and upon certification by the school district, if that student is proficient in reading shall enter grade 4;
 - not proficient in reading after completion of the prescribed intervention and remediation and must be retained and provided with a different reading improvement plan or the same plan if the student is showing growth, and the student must be referred to the principal who, consulting with the teacher and the SAT, may recommend promotion to the fourth grade if the student:
 - is not habitually truant; and
 - has completed at least two different reading improvement plans or a single reading improvement plan that has demonstrated growth in two successive years (see "**Technical Issues**," below); and
 - a student must not be retained more than once in grades K-3.

For Students in Grades 4-8:

- costs for reading improvement plans will be borne by the school district;
- reading proficiency plans and promotion policies must be aligned with the school-district-approved valid and reliable assessment and state standards of excellence;
- no later than the end of the second grading period of each school year, the parent of a student who is not academically proficient must be notified in writing;
- a conference with the SAT must be held to discuss strategies, including intervention and remediation programs available to assist the student in becoming academically proficient;

- the student’s specific academic deficiencies and the available strategies and intervention and remediation programs must be explained to the student’s parent;
- a written intervention plan must be developed that contains timelines, academic expectations, and the measurements to be used to verify that a student has overcome academic deficiencies;
- the parent shall be provided with specific strategies to use in helping the student achieve reading proficiency;
- the reading improvement plan must be implemented immediately;
- promotion and retention decisions for each student at the end of grades 4-8 are based on the determination that a student is:
 - academically proficient and can enter the next highest grade; or
 - not academically proficient and must participate in a required level of remediation. In this case, the SAT must develop an academic proficiency plan outlining timelines and monitoring activities to ensure progress toward overcoming the student’s academic deficiencies;
- an alternate program must be provided immediately for an academically deficient student who has received an intervention and remediation program that is different from the previous year but fails to become academically proficient at the end of that year as measured by grades, screening assessment performance, and other measures identified by a school district; and
- if a student does not demonstrate reading proficiency for two successive school years, must be referred to the SAT and placed in an alternate program designed by the school district, effective immediately.

For Students in Grades 9-12, the cost of summer school and extended day intervention and remediation programs is the responsibility of the parent, unless parents are determined to be indigent as defined by the department, in which case the school district must bear those costs.

Exceptions:

CS/SB 724 states that the promotion, remediation, and retention provisions for students in grades K-3 and grades 4-8, summarized above, do not apply to any student who:

- scores at least at the 50th percentile on a department-approved, norm-referenced assessment or at the proficient level on an alternative school-district-approved-criterion-referenced assessment;
- demonstrates proficiency on a teacher-developed portfolio that is equal to at least a proficient performance on the statewide standards-based assessment;
- shows sufficient academic growth by meeting acceptable levels of academic performance specified by PED;
- is an English language learner who is proficient in a language other than English on a valid and reliable reading assessment or, for a speaker of another language, who has had fewer than two years of instruction in English; 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.

Reporting Requirements:

- by May 15 of each year, each school district must include in its annual accountability report:
 - the number and percentage of students identified as requiring intervention;
 - the number and percentage of students who received intervention and remediation including the number and percentage of students who:
 - achieved reading proficiency within the school year;
 - did not achieve reading proficiency within the school year and were recommended for retention;
 - were retained in the same grade; or
 - were not retained in the same grade due to a parental waiver;
 - reading proficiency data for students who did not achieve reading proficiency and were promoted to the next higher grade due to a parental waiver; and
 - SAT promotion and retention decisions for students who previously were promoted to the next higher grade due to a parental waiver; and
- Finally, PED must report to the Legislative Education Study Committee (LESC) at its October meeting (see “**Technical Issues**,” below) to include data from the accountability reports.

Fiscal Impact:

CS/SB 724 does not have an appropriation.

Fiscal Issues:

Screening Assessments in Other Languages

As noted under (“**Bill Summary**,” above), CS/SB 724 requires that, if appropriate, the grade K-3 reading screening assessment be given in the student’s first or second language. Presumably, the district would bear the cost of this assessment in another language, yet the bill includes no appropriation. Nor does it indicate who decides when an assessment in another language is appropriate.

Executive Budget

In two related bills (HB 41aa *School Grade Promotion & Retention* and SB 66 *School Grade Promotion & Retention*), the PED analysis indicates that as part of the Executive budget request, funding was requested to support the New Mexico Reads to Leads!² program that is aligned with CS/SB 724.

² The New Mexico Reads to Lead! Initiative funds a reading K-3 Formative Assessment System provided to districts at no cost. It also provides regional and district reading coaches, supports for intervention, and professional development for parents, teachers, reading coaches, and administrators.

PED's funding request includes:

- \$3.6 million for FY 16 to support;
- DIBELS Next³ and IDEL⁴ K-3 formative screening assessments;
- professional development for school administrators, teachers, reading coaches, and parents with professional development on the following:
 - 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; and
- \$11.9 million for districts to intervene with those students not proficient, which the department anticipates will be 24,000 students (6,000 in grades K-3) will need additional reading support. The district funding includes:
 - \$1.4 million for reading coaches to support smaller, rural districts;
 - \$10.1 million to provide funding to support reading coaches and interventions for the district level that will support schools with implementation of the formative assessment; and
 - \$400,000 will be used to ensure existing programs remain funded and expand the program by allowing more districts and charter schools to participate.

K-3 Plus

The Legislature may wish to consider funding the K-3 Plus program (see “**Background**,” below) as a mandated state initiative. K-3 Plus is currently funded as an appropriation to the statutorily created “K-3 Plus Fund” administered by PED. The *General Appropriations Act of 2014* included:

- \$21,281,500 appropriated for the K-3 Plus program; and
- language requiring that PED use the final unit value set for school year 2013-2014 as the basis for funding June, July, and August 2014 K-3 Plus programs.

Statute requires that K-3 Plus programs are funded at no less than 30 percent of the unit value per student based on enrollment at each individual school program on the 15th day of the program. Based on a final unit value for school year 2013-2014 of \$3,817.55, each participating student would generate at least \$1,145.26.

Technical Issues:

For ELLs, CS/SB 724 defines the term “reading screening assessment” as a “*school-district-determined* and developmentally appropriate English language assessment *that is the same for all school districts and approved by the department*” (emphasis added). It seems unclear how such

³ DIBELS Next is an assessment used to measure the acquisition of early literacy skills from kindergarten through grade 6.

⁴ IDEL is a research-based formative assessment series designed to measure the basic early literacy skills of children learning to read in Spanish.

an assessment could be both determined by a particular school district yet also the same for all school districts and approved by the department.

For students who are not proficient in reading at the end of grade 3, CS/SB 724 requires retention with either a different improvement plan or the same plan if the student is showing growth. This same subsection (page 7, lines 2-16) also requires referral to the principal; and it allows the principal to recommend that the student be promoted to fourth grade under certain conditions. It seems unclear, however:

- whether the referral to the principal applies only in the case of the same plan used again;
- when the referral might be made (whether before the student begins the second year in third grade or at some point during that second third-grade year); and
- when the principal may recommend promotion to fourth grade.

Finally, CS/SB 724 requires PED to report to the LESC “*at its October meeting* to include the data derived from the accountability reports received from each school district” (emphasis added). It is unclear whether the report is required only once – presumably in October 2015 – or in October of each year.

Substantive Issues:

Current Law

If enacted, CS/SB 724 would remove the provisions in current law that allow a parent to sign a waiver indicating the parent’s desire that a student in grade 3 be promoted to the next higher grade effective school year 2016-2017. However, the bill indicates that a parent may sign a waiver for his or her child not to be retained in grades K-2 effective school year 2015-2016. A parent may also sign a waiver for his or her child not to participate in a required level of remediation if they are not proficient in reading.

In 2000, the Legislative Education Study Committee (LESC) endorsed legislation that was enacted to address students not achieving proficiency at grade level but promoted to the next grade despite being unprepared – a practice known as “social promotion.” Current provisions state:

- “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 SAT; 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 SAT; or
 - if the SAT 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.

Student Proficiency in Reading

CS/SB 724 defines “reading proficiency” as a score on the statewide standards-based assessment that is higher than the lowest level established by the department. As seen in the table below, PED has established four proficiency levels: Beginning Steps, Nearing Proficient, Proficient, and Advanced. Grade 3 is the first year students are tested using the standards-based assessment.

Beginning Step is the lowest level established by the department and this group of students will be considered for retention if the bill is enacted. Those students who are Nearing Proficient, Proficient, and Advanced meet proficiency as defined in the bill and will move to the next highest grade level.

Third-Grade Reading Proficiency – 2013-2014

NM Public Schools	Number Tested	Beginning Step %	Nearing Proficient %	Proficient %	Advanced %	Proficient & Above %	Computer Based Testing %
All Students	25,462	24.3	23.9	45.3	6.5	51.8	16.7
Female	12,534	20.2	23.8	48.3	7.7	55.9	16.9
Male	12,926	28.2	23.9	42.5	5.4	47.9	16.4
Caucasian	6,333	14.6	18.0	55.5	12.0	67.4	17.9
African American	574	26.3	25.6	43.4	4.7	48.1	9.2
Hispanic	15,672	26.3	25.4	43.5	4.8	48.3	15.3
Asian	354	9.9	13.8	57.3	18.9	76.3	8.8
American Indian	2,522	37.6	30.1	30.1	2.2	32.3	24.8
Economically Disadvantaged	18,926	28.7	26.4	40.7	4.1	44.8	17.3
Students w Disabilities	3,645	62.8	18.1	14.7	4.4	19.0	14.8
English Language Learners, Current	5,633	38.9	27.4	31.3	2.4	33.7	14.2
English Language Learners, Exited	798	9.8	21.2	61.0	8.0	69.0	18.0

Source: PED

Background:

Education Commission of the States: Promotion and Retention

According to the Education Commission of the States (ECS), 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.

Opponents of retention often cite research on retention, proposing 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 student's 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.

Third Grade Retention in Florida

During 2013 interim, the LESC heard testimony relating to the impact of third grade retention in Florida. Referring to a committee handout, a Senior Fellow from the Manhattan Institute for Policy Research and professor from the University of Colorado informed the committee that, in the past, public schools tended to promote students to the next grade level even if they had very low academic proficiency. He also noted that past research has been severely limited by its inability to account for unobservable differences between retained and promoted students.

The professor provided the committee with some background on Florida's policy, noting that:

- the policy was first enacted statewide in 2002;
- third grade students were required to meet the level-two benchmark on the state's reading exam in order to be default promoted to the fourth grade; and
- students could receive one of a variety of exemptions and be promoted even if they scored below the threshold.

In addition, regarding intervention rather than retention, the professor informed the committee that retained students were required to:

- attend summer school;
- be placed in the classroom of a "high-performing teacher";
- have developed academic improvement plans; and
- receive an additional 90 minutes of daily reading instruction during the school year.

The professor summarized the findings for retained students by indicating that:

- retention had an effect that declines over time, but is still distinguishable and meaningful in size as late as seventh grade;
- there is a similar positive effect on fifth grade science tests; and
- results are similar on low-stakes standardized tests.

The professor further informed the committee that the research was not able to completely separate the effect of retention from that of other interventions tied to the policy, but did show that assignment to a "high quality" teacher in the retained year is not driving the results. He concluded by stating that there is strong evidence that remediation under a policy similar to Florida's has a large and sustained positive effect on student achievement.

In response to a committee member's question about requiring retained students in Florida to receive an additional 90 minutes of daily reading instruction during the school year, the professor responded that Florida spent over \$700 million on remedial instruction, but he was not sure how the 90 minutes of daily reading was implemented.

Early Literacy and Interventions, LESC 2014 Interim

In a joint meeting with the Legislative Finance Committee in August 2014, the LESC heard testimony on national trends in early literacy interventions by a professor of education in the Harvard Graduate School of Education and by a policy analyst with the ECS.

In response to a committee member's comment relating to the Legislature's discussions on mandatory retention and early interventions, the professor explained that the state needs to focus on improving schools' overall quality of classroom instruction, not just interventions, including professional development that is focused on improving the quality of daily instruction and academic language development. She also emphasized the need to track data for students as a group and not just the individual.

Describing her focus on children from minority, multi-lingual, and socio-economically disadvantaged backgrounds, the professor compared New Mexico's demographics with those of the rest of the country:

- 33 percent of children ages birth through five in New Mexico live in poverty, compared to 26 percent of US children among the same age group; and
- 22 percent of children and youth in New Mexico are children of immigrants, compared to 24 percent in the US.

A majority of these children, this testimony emphasized, are generally not fluent in English, creating an obstacle to their proficiency in literacy.

Among other points, this testimony:

- noted that it is equally important to create partnerships with adults to increase their capacity to assess and support children's language and literacy development; and
- emphasized the need to support good teaching with high-quality and comprehensive curricula that promote language development.

Beginning with the value of assessments of reading skills in the early grades, the ECS testimony reported that policies nationwide indicate that:

- 33 states (New Mexico among them) and the District of Columbia assess reading proficiency in at least one grade, between pre-K and grade 3;
- 19 of those states assess in grades K-3;
- three states begin assessing in pre-K;
- nine states do not assess until grade 3, which is considered too late for remediation;
- 30 states and the District of Columbia offer some type of intervention; and
- 16 states and the District of Columbia require third grade retention.

In New Mexico, this testimony continued:

- all K-3 students are assessed;
- continuous assessments for monitoring student progress are in place;
- an individualized reading plan is created for those students who are not reading on grade level and do not meet reading proficiency standards;
- extra time in the student's day or year is in place for the implementation of reading programs; and
- professional development is provided to teachers.

The ECS testimony also identified the components of a strong reading policy:

- early identification/assessment of pre-K/kindergarten;
- early intervention outside of normal school hours;
- highly qualified reading teachers with pre-service teaching programs to offer certification;
- assignment of highly effective teachers to those students with the greatest need;
- parental involvement;
- ongoing assessment; and
- program evaluation.

Current Statewide K-3 Reading Screening Assessment

PED plans to continue to provide DIBELS Next and IDEL as tools selected for the state's K-3 screening assessment. In school year 2013-2014:

- 100,303 students participated in the DIBELS Next assessment, an increase of 26,032 from school year 2012-2013; and
- IDEL was administered to 8,567 students in school year 2014-2015, an increase of 2,422 from school year 2012-2013.

K-Plus Program

In 2003, legislation was enacted to create the Kindergarten Plus pilot project in four school districts as a three-year study administered by PED. Kindergarten Plus extended the school year 40 days for participating kindergarteners for the purpose of demonstrating that additional time in kindergarten narrows the achievement gap between disadvantaged students and other students.

In 2006, LESC-endorsed legislation was enacted to amend the statute to extend the Kindergarten Plus pilot project to a six-year study and to expand the project beyond the original four school districts to allow applications by any other school district with high-poverty schools, where 85 percent or more of the students are eligible for free or reduced-price lunch.

In 2007, legislation endorsed by the LESC was enacted to create K-3 Plus, a six-year pilot project that extends the school year in kindergarten through third grade by at least 25 instructional days, starting up to two months earlier than other classes.

Patterned after Kindergarten Plus, the K-3 Plus pilot project was designed to demonstrate that increased time in kindergarten and the early grades narrows the achievement gap between disadvantaged students and other students, increases cognitive skills, and leads to higher test scores for all participants. K-3 Plus, which is administered by PED, provides additional time on literacy, numeracy, and social skills development of the participants.

In 2012, LESC-endorsed legislation was enacted to convert K-3 Plus from a pilot project to an established program in PED.

Committee Referrals:

SFC/SEC

Related Bills:

SB 66 *School Grade Promotion & Retention*

SB 468 *Reading Success Act*

HB 41aa *School Grade Promotion & Retention*