

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** HB 67a

**52nd Legislature, 2nd Session, 2016**

**Tracking Number:** .202698.3

**Short Title:** School Grade Retention & Reading Plans

**Sponsor(s):** Representative Monica Youngblood

**Analyst:** Christina McCorquodale

**Date:** February 11, 2016 (Revised)

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**AS AMENDED**

**The House Education Committee amendment cleans up language in the title of the bill to reflect consistency with language in the bill.**

- **striking the phrase “shall not be” (page 1, line 20);**
- **striking the phrase “retained but” (page 1, line 21); and**
- **striking “improvement” (page 1, line 21) and inserting “proficiency” in lieu thereof.**

**Original Bill Summary:**

HB 67 repeals and replaces current remediation and promotion provisions in the *Assessment and Accountability Act* in the *Public School Code*. Beginning with the 2016-2017 school year, the bill requires targeted instruction to be provided to a student who is not proficient in reading at the end of kindergarten, first grade, second grade, or third grade and establishes mandatory retention for students who are not proficient in reading at the end of third grade who do not meet certain enumerated exemptions. The bill requires students who are not academically proficient at the end of fourth through eighth grade to participate in required remediation. It eliminates existing requirements to provide remediation for first through third grade students who are not academically proficient and eliminates existing provisions related to retaining first through third grade students who are not academically proficient.

**At a Glance:**

- HB 67 focuses on K-3 reading proficiency and ensuring students are proficient in reading by the end of third grade.
- The bill eliminates the focus of other content areas for kindergarten through third grade who are not “academically proficient.”
- Studies confirm that students retained in earlier grades experience short term gains in reading and math and retention in earlier grades decreases the probability of retention in later grades.
- Improving the school’s overall quality of classroom instruction, including relevant professional development that focuses on improving the quality of daily instruction and academic language development will ensure proficiency in literacy.
- Using multiple measures to determine a student’s reading proficiency may be more conclusive for making promotion and retention decisions.

- Parental involvement may be important, especially through the student assistance team in the decision process for determining promotion and retention decisions.
- The bill states for the 2017-2018 school year, at the end of grade 3, grade promotion and retention decisions will be made for students. The definition for “reading proficiency” uses Partnership for Assessment of Readiness for College and Careers (PARCC), or screening assessment. PARCC results are not available until after June 2, and it appears screening assessments may be more useful.

**Fiscal Impact (Revised):**

HB 67 does not include an appropriation.

House Appropriations and Finance Committee (HAFC) Substitute for HB 2 & 4, which was adopted by the House, appropriates \$17.0 million for Reads to Lead (RTL) for FY17. Language in the bill states \$2.0 million of the RTL appropriation is contingent upon the Public Education Department (PED) granting awards to schools with a high concentration of kindergarten through third grade students who are socioeconomically disadvantaged and who are not proficient in reading.

PED analysis indicates districts are required to intervene with those students not proficient and anticipates that 24,000 students (6,000 per grade level in kindergarten through third grade) will need additional reading support. PED also indicates funding for RTL aligns with HB 67.

In FY16, the Legislature appropriated \$23.7 million for the summer 2015 K-3 Plus program and HAFC Substitute for HB 2 & 4 appropriates \$25.7 million for the K-3 Plus program for FY17.

In current statute, the cost of remediation (summer school, extended-day or -week, tutoring, etc...) is borne by the school district for first through eighth grade students. The bill extends remediation requirements to kindergarten students but does not include an appropriation to cover these additional costs.

**Detailed Bill Provisions:**

***For Students in Kindergarten Through Third Grade***

- Using the 2015-2016 school year data, public schools are to establish baseline reading proficiency assessment data to include reading performance levels based on a screening assessment approved and provided by PED.
- Beginning with the 2016-2017 school year, school districts and charter schools are required to provide:
  - intervention, remediation, and reading improvement programs to students in kindergarten through third grade who do not demonstrate reading proficiency;
  - intervention, remediation, and reading improvement plan that are aligned with the screening assessment results and state standards; and
  - a reading improvement plan for students not demonstrating proficiency that requires a school district, at the beginning of a school year to administer a screening assessment.

- As determined by the screening assessments, a student assistance team (SAT) must immediately develop a reading improvement plan for non-proficient students in kindergarten through third grade that identifies a student’s reading deficiencies and includes intervention and remediation programs and specific strategies for a parent to use in helping the student achieve reading proficiency.
- Beginning with the 2017-2018 school year, the parent of a student who is not proficient in reading at the end of the first grading period must be given notice that the student will be provided with intensive targeted instruction.
- At the end of third grade, promotion and retention decisions for each student are to be based on a determination that a student is:
  - proficient in reading and will enter the next highest grade;
  - not proficient in reading and required to participate in a required level remediation; however, upon certification by the school district that the student is proficient in reading, the student shall enter the next highest grade; or
  - not proficient in reading after completion of the prescribed intervention and remediation program and retained in the same grade with a reading improvement plan that is different from the prior year’s reading improvement plan developed by the SAT so the student may become proficient in reading.
- No student will be retained for a total of more than one school year between kindergarten and third grade as a result of not having attained proficiency in reading.
- While a parent cannot waive retention of their non-proficient third grade student, the parent can refuse for their child to participate in any prescribed intervention.

***For Students in Fourth Through Eighth Grade***

Provisions in HB 67 remain similar to current statute.

HB 67 requires a school district to assess a student’s growth in kindergarten through eighth grade in reading and other academic subjects by using:

- a PED-approved screening assessment in kindergarten through second grade; and
- the statewide standards-based assessment in third through eighth grade.

***Definitions***

Paragraph A defines a number of terms to include the following: academic proficiency plan; intensive targeted instruction; intervention; reading improvement plan; reading proficiency; remediation; school district; screening assistance team; and valid and reliable assessments (see page 2 of the bill).

**Technical Issues:**

This bill does not include a definition of “academically proficient.”

Paragraph J indicates the assessment used for student growth in reading and other academic subjects; for kindergarten through second grade, school districts shall use the screening assessment; for third grade through eighth grade, the statewide standards-based assessment. However, the bill does not use “student growth” anywhere else in the bill and remediation and retention decisions are not based on growth but proficiency.

**Substantive Issues:**

***Current Law***

If enacted, HB 67 will remove the provisions in current law that allow a parent to sign a waiver indicating the parent’s desire that a non-proficient student be promoted to the next higher grade.

***Student Proficiency in Reading***

HB 67 defines “reading proficiency” as a score on the statewide standards-based assessment that is higher than the lowest level established by PED. Third grade is the first year students are tested using the standards-based assessment. PED has not indicated which levels of performance indicators will meet the department’s lowest level to be established. As demonstrated in **Table 1**, 27.5 percent of third graders scored at the lowest level on the PARCC assessment.

<b>Table 1</b>					
<b>2014-2015 PARCC RESULTS</b>					
<b>Percent of 3rd Graders Proficient <sup>1</sup></b>					
<b>Level Indicators</b>	<b>L-1</b>	<b>L-2</b>	<b>L-3</b>	<b>L-4</b>	<b>L-5</b>
<b>READING</b>	27.5	24	23.6	23.6	1.3

<sup>1</sup> According to PED, PARCC performance level indicators: L1 – did not meet expectations; L2 – partially met expectations; L3 – approached expectations; L4 – met expectations; and L5 – exceeded expectations.

PED has not yet released disaggregated results from PARCC. However, performance on the New Mexico Standards-Based Assessment in previous years demonstrate students who come from a low social economic status, who are English learners (ELs), Hispanic, and Native American, and students with learning disabilities scored lower than average (see **Table 2**).

<b>Table 2</b>				
<b>An Overview of New Mexico Standards-Based Assessment 3rd Grade Results for 2011-2014</b>				
<b>GROUP</b>	<b>READING: PERCENT PROFICIENT &amp; ABOVE</b>			
	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>All Students</b>	52.9	52.4	55.2	51.8
<b>Hispanic</b>	48.2	47.8	51	48.3
<b>American Indian</b>	35.5	36.2	39.2	32.3
<b>English Language Learners</b>	33	28.1	35.9	33.7
<b>Students with Disabilities</b>	21.7	20.6	20	19

PED analysis included data from *An Evaluation of Florida's Program to End Social Promotion* that provided the assessment of initial effects of Florida's policy requiring students to reach a minimum threshold on the reading portion of the Florida Comprehensive Assessment Test (FCAT) to be promoted to the fourth grade. The report states:

- low-performing students who were actually retained made gains in reading greater than those of similar students who were promoted by 4.1 percentile points on the FCAT and 3.05 percentile points on the Stanford-9, a nationally respected standardized test that is administered to all Florida's students, with no stakes tied to the results; and
- after one year, the report indicated that retained students outperformed their non-retained peers by about 0.05 standard deviations. The reading benefit of retention after two years was an economically substantial .040 standard deviations.

A report from the National Bureau of Economic Research, *The Effects of Test-Based Retention on Student Outcomes Over Time: Regression Discontinuity Evidence from Florida*, confirms students retained in third grade under Florida's test-based promotion policy experience short-term gains in both math and reading achievement. On average, over the first three years after being held back, retained students outperform their same-age peers who were promoted by 0.31 standard deviations in reading and 0.23 standard deviations in math. While positive, these effects fade out over time, becoming statistically insignificant in both subjects within five years. The study also concluded that test-based retention in third grade reduced retention in each of the four subsequent years and also appears to have no effect on a student's probability of graduating.

HB 67 defines "valid and reliable assessments," in part, as being thoroughly tested, peer-reviewed and accepted by authorities and practitioners (page 4, line 15). It is unclear if the PARCC assessment meets these requirements. At a 2015 LESC meeting, it was asked if PARCC had been validated and PED indicated it is working to conduct a validity study of the PARCC assessment. According to PED, PARCC tests are aligned to CCSS and should provide valid and reliable data to measure a student's college and career readiness. PED has engaged postsecondary institutions to conduct judgment studies, including considering whether students scoring at levels four and five will be successful in college; however, higher education stakeholders indicated needing data from several cohorts of students before providing feedback.

### **Background/Research:**

#### ***Early Literacy and Interventions LESC 2014 Interim***

In a joint meeting with the Legislative Finance Committee in 2014, the LESC heard testimony on national trends in early literacy interventions by Dr. Nonie Lesaux, Professor of Education at Harvard Graduate School of Education.

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 as individuals.

Dr. Lesaux described children from minority, multi-lingual, and socio-economically disadvantaged backgrounds in New Mexico's demographics compared with those of the rest of the country:

- 33 percent of children birth through 5-years old 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.

Dr. Lesaux emphasized a majority of these children are generally not fluent in English, creating an obstacle to their proficiency in literacy.

***Education Commission of the States (ECS): Promotion and Retention***

ECS states 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.

On the other hand, critics of social promotion, 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 and retention policies, policymakers should examine:

- teacher quality: students taught by inadequately prepared teachers will find greater difficulty meeting the high grade-level standards recently adopted in many states;
- relevant professional development to directly target effective interventions;
- address academic difficulties before students get far behind in literacy skills; by the time the results of the statewide assessments 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 sizes, 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 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.

**Attachment 1** provides a glance as of 2014 of national third grade reading policies that include:

- required assessments in kindergarten through third grade;
- required interventions recommended by the states; and
- the number of states that require parental notification of reading deficiencies and possible school grade retention.

Since that document was published, however, some states have revised their kindergarten through third grade reading policies. Notably, Florida and Oklahoma have paused or eliminated their mandatory retention policies as follows:

- In spring 2015, the Florida legislature passed CS/HB 7069 and was approved by the Governor with an immediate effective date. Some of its provisions and implementing rules include:
  - eliminating prescriptive remediation and progress monitoring requirements for low-performing students and providing targeted instructional support in reading for students in kindergarten;
  - requiring third grade students who score in the bottom quintile on the 2014-2015 English language arts' assessment to be identified as "at risk of retention" and to be provided intensive instruction and support until the assessment's validity has been confirmed;
  - Florida Standards Assessment (FCAT), the statewide assessment has since been validated by a third party, and the statute says third graders who score at level 1 in reading on the FCAT for ELA must be retained; and
  - students demonstrating the required reading level through a state-approved alternative standardized reading test or through a student portfolio can be granted a good cause exemption and be promoted to fourth grade. The teacher can make that call and can present the evidence to the principal who will decide if the student is to be promoted or retained, and then the principal presents the decision in writing to the superintendent who may or may not accept the request for promotion.
- In 2014, Oklahoma enacted HB 2625 which prohibits a student from being retained based solely on their performance on one test. Under the bill, if a student fails the third grade reading assessment, then a student reading proficiency team (parents or guardian, teacher, principal and reading specialist) decides if retention is in the best interest. Provisions include:
  - providing intensive remediation for any student shown to have a reading deficiency in first or second grade until the student is able to demonstrate reading proficiency; and
  - placing the same conditions for retention or probationary promotion based on the recommendation of a student reading proficiency team on students who test at limited knowledge on the third grade reading assessment.

Analysis indicate in practice, by providing for an intensive remediation plan for struggling students beginning in the first grade, and by including students who test at "limited knowledge" under remediation requirements, this would provide intensive interventions for more students.

## **Policy Indicators and Goals: *New America's Early and Elementary Education Policy***

According to *New America's Early and Elementary Education Policy*, a nonprofit civic enterprise that provides impartial analysis for pragmatic policy solutions of public problems, in order to significantly improve children's literacy development as well as learning and development in other areas such as math, science, and social-emotional domains, federal, state, and local education agencies need to take a comprehensive, coordinated, and connected birth to third grade (B-3<sup>rd</sup>) approach, especially with an emphasis on pre-kindergarten and early elementary grades.

While most states, including New Mexico, have made progress toward developing a comprehensive pre-kindergarten-third grade program, these systems are still fragmented and uncoordinated. This leaves students without sufficient opportunities to help them succeed academically, especially children who speak English as a second language, children with special needs, and children from low-income families.

To determine how states are working toward addressing this issue, *New America's Early and Elementary Education Policy* team developed a B-3<sup>rd</sup> policy framework based on research and discussions with early education experts. The team grouped states into three categories based on meeting the framework as:

- 1) walking – making solid strides toward comprehensive B-3<sup>rd</sup> policy (five states);
- 2) toddling – progress in some areas but not in others (35 states); and
- 3) crawling – at early stages with limited progress (11 states).

New Mexico is among 35 states to fall into the toddling category, though New Mexico is considered closer to the walking category in its progress toward the policies outlined in the framework.

The framework includes an analysis of state policies in seven areas that are essential for supporting children's literacy development: educators – teachers and leaders; standards, assessment, and data; equitable funding; pre-kindergarten access; quality full-day kindergarten access; quality dual language learner (DLL) supports; and third grade reading laws (see **Attachment 2**).

Among its recommendations, the *New America's Early and Elementary Education Policy* team states that a balance must be met between state and local autonomy to implement policies so that children and families have equitable access to high-quality educational opportunities.

### ***A glance around the country: Highlights of third grade reading policies***

Assessments are required in the following grades:

- Grades preK-3 (5 states)
- Grades K-3 (25 states plus DC)
- Grades 2-3 (2 states)
- Grade 3 only (4 states)
- Grades K & 2 (1 state)

Interventions required or recommended by states:

- Instruction outside of school hours including extended day/extended year (21 states plus D.C.)
- Supplemental instruction during regular schools hours (21 states)
- Summer school or summer reading program (18 states plus D.C.)
- Individual or group tutoring (15 states plus D.C.)
- Instruction tailored specifically to a student's need (13 states plus D.C.)
- Academic Improvement Program (11 states)
- Implementation of a Home Reading Program (12 states)
- Assignment to a different teacher (7 states plus D.C.)
- Involvement of a reading specialist (6 states)
- Online or computer-based instruction (4 states)
- Transition class (4 states)

Twenty-four states plus the D.C. require parental notification of a student's reading need, interventions in place and, if applicable, the possibility a student may be retained.

Of the 16 states plus D.C. that retain students:

- 12 will promote students if they participate in an intervention.
- 16 states plus D.C. provide good cause exemptions for at least one of the following reasons:
  - ❖ Students receiving special education services (14 states plus D.C.)
  - ❖ Students previously retained either once or twice on the basis of a reading deficiency (10 states plus D.C.)
  - ❖ English language learners (11 states plus D.C.)
  - ❖ Recommendation from a principal or teacher (2 states)
  - ❖ Parental appeal (1 state)

*See the chart below for a state-by-state breakdown.*

Policy Indicators	Policy Goals	NM Progress
<p><b>Educators: Teachers and Leaders</b></p>	<p>State-level policies governing educator preparation and licensure should account for the unique needs of Pre-K-3<sup>rd</sup> grade teachers who are laying the foundation for children’s success in school and later in life, and this includes preparation in the science of reading.</p>	<ul style="list-style-type: none"> <li>- has an early childhood education (ECE) teaching license that spans birth to third grade but is not required for teachers holding a K-8 license who teach in kindergarten through third grade</li> <li>- does not require principals to have specialized preparation in ECE prior to leading an elementary school</li> <li>- for licensed child care centers, directors must have a Child Development Associate’s (CDA) but lead teachers in child care centers can teach with less than a high school diploma or GED</li> </ul>
<p><b>Standards, Assessments, and Data</b></p>	<p>Children need to move seamlessly from classroom to classroom, especially from Pre-K into kindergarten to make it easier for teachers to build upon their academic and developmental skills.</p>	<ul style="list-style-type: none"> <li>- has comprehensive early learning guidelines for Pre-K, infants, and toddlers, and provides college- and career-ready standards for grades K-12</li> <li>- mentions dual language learners (DLLs) in the introduction and literacy sections</li> <li>- has not developed K-12 social-emotional learning standards;</li> <li>- developed a common statewide kindergarten entry assessment called Kindergarten Observation Tool (KOT) that will be implemented in the fall of 2016</li> <li>- requires a reading assessment in kindergarten through second grade but does not make recommendations or require a math assessment in those grades</li> <li>- can link individual child data from some ECE programs to the state K-12 longitudinal data system and collects ECE screening and assessment data from at least one type of early childhood program</li> <li>- FOCUS quality rating system (QRIS) does not rate programs on learning environment or teacher-child interactions</li> </ul>
<p><b>Equitable Funding</b></p>	<p>Funding needs to be equitable and sufficient but because schools who serve the nation’s most vulnerable children – those facing poverty,</p>	<ul style="list-style-type: none"> <li>- does not fund pre-K programs through a funding formula</li> <li>- has a flat funding distribution that provides its highest-poverty districts with about \$1.02 for every dollar in low-poverty districts<sup>1</sup></li> </ul>

<sup>1</sup> According to *New America’s Early and Elementary Education Policy*, the federal government recommends that states reimburse child care centers for children from families receiving child care subsidies at the 75<sup>th</sup> percentile of the state market rate for child care. New Mexico does not meet this threshold and reimburses child care centers based on a tiered system for quality.

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hunger, family turmoil, high mobility, or other challenges – often have limited resources, therefore it is important for states to allocate more money to districts with students facing poverty

**Pre-K: Access and Quality**

All states should strive to ensure that all three- and four-year-olds have access to high quality pre-K programs, using public resources to first prioritize the most at risk.

- has a state-funded pre-K program but does not serve three year olds
- gives local authority to determine length of day for pre-K

**Full-Day Kindergarten**

Research shows that full-day kindergarten supports better academic outcomes for students in the early years and children in full-day kindergarten programs made statistically greater gains in the early literacy skills than their peers in half-day programs.

- does not require full-day kindergarten but districts offering full-day kindergarten are not allowed to charge tuition;
- funds full-day kindergarten at the same rate as first grade; and has a minimum length of day for full-day kindergarten equivalent to first grade

**Dual Language Supports (DLLs)**

States that require pre-K programs to screen for DLLs will likely do a better job of identifying and providing early support to students as well as engaging parents who speak a language other than English at home.

- state policy allows districts to provide a bilingual, multicultural education program (BMEP) for DLLs and native or proficient English-speaking students;
- DLLs participating in a BMEP must achieve a proficient score of 5<sup>2</sup> on the WIDA ACCESS test in order to be identified as fully English proficient (FEP);
- has family engagement laws that specifically mention families that speak languages other than English at home
- allows bilingual non-English classes in pre-K programs, but does not require a screening assessment or provide families with a home language survey as required in K-12

**Third Grade Reading Laws**

States that include a third grade reading law that ensures students are reading at grade-level by the end of third grade include; early identification

- state law requires annual reading assessments for students in kindergarten through third grade but does not require reading assessments in pre-K

<sup>2</sup> As noted in the Public Education Department's (PED) BMEP Technical Manual, they are reclassified as FEP when they have attained a composite score of 5.0 on the English language proficiency assessment, ACCESS. According to PED, it was determined to use the composite score of 5.0 because it correlated to proficiency on the New Mexico Standards-Based Assessment, and it created an objective measurement. When DLLs are reclassified as FEP, these students enter mainstream public education.

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and intervention before third grade; and parent notification of student progress. This framework does not support the requirement of third grade retention if they do not score proficient on state reading assessments.

- state law does not require retention for third grade students who do not meet grade-level expectations in reading