
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

AB 104 (Lorena Gonzalez) - Pupil instruction: retention, grade changes, and exemptions

Version: June 2, 2021

Urgency: Yes

Hearing Date: June 10, 2021

Policy Vote: ED. 6 - 0

Mandate: Yes

Consultant: Lenin Del Castillo

Bill Summary: This bill, an urgency measure, establishes several interventions for students impacted by the COVID-19 pandemic, including a process to initiate a discussion on whether retention may be appropriate and a process for students to receive a “pass” or “no pass” instead of a letter grade for the 2020-21 academic year. The bill also requires the California State University (CSU) and encourages the University of California (UC) and private postsecondary institutions to accept a “pass” for credit for admissions purposes.

Fiscal Impact:

- By requiring local educational agencies (LEAs) to develop the temporary processes and an application for student retention decisions, notify parents of these options, and conduct the consultations to determine retention decisions, this bill could result in significant, one-time Proposition 98 General Fund costs. A precise amount is unknown and would be impacted by the exact number of requests for retention and the associated costs for consultation, but could potentially be in the hundreds of thousands of dollars statewide. These costs are likely to be deemed reimbursable by the Commission on State Mandates.
- The bill’s requirement for the California Department of Education to create and provide a “pass” grading template and information about which colleges and universities will accept transcripts with a “pass” instead of a letter grade is expected to be minor and absorbable within existing resources.
- The CSU indicates that its campuses will have a considerable increase in the number of students who will need additional support services for English and math due to the lack of graded high school coursework, ACT/SAT exam results and CAASPP assessment in 2020, and this bill could be a factor that contributes to that need for increased support services. The CSU estimates the cost of these services to be approximately \$600,000 at its larger campuses.

Background: Existing law requires the governing board of each LEA to adopt policies regarding student promotion and retention and requires that students be promoted or retained only as provided in policies adopted pursuant to statutes. The law requires the policy to provide for the identification of students who should be retained and who are at risk of being retained in their current grade level on the basis of either of the following: the results of the statewide standardized assessments in English language arts and mathematics or the student’s grades and other indicators of academic achievement

designated by the district. Existing law also requires the policy to base the identification of students in grades 2 - 4 primarily on the basis of the student's level of proficiency in reading, and in grades 3 - entrance to high school primarily on the basis of the student's level of proficiency in reading, English language arts, and mathematics.

Existing law requires a student to be retained if the student's test scores or grades identify the student as performing below the minimum standard for promotion, unless the student's regular classroom teacher determines in writing that retention is not the appropriate intervention for the student's academic deficiencies. The law requires the policy to provide for parental notification when a student is identified as being at risk of retention, and provide the parent with the opportunity to consult with the teacher responsible for the decision to promote or retain the student; and provide a process whereby the decision of the teacher to retain or promote may be appealed, and requires the burden to be on the appealing party to show why the decision of the teacher should be overruled.

Proposed Law: This bill requires an LEA, upon receiving a request from the parent of an eligible pupil to retain the pupil for the 2021–22 school year, to offer the parent a consultation with the parent, the pupil, the administrator, and a teacher. The consultation shall occur within 30 days of receiving the request and include specified components, including discussion of all available learning recovery options and consideration of the pupil's academic data and any other information relevant to whether retention is in the pupil's best interests, academically and socially.

This bill requires an LEA to:

- a) Ensure that a retention decision is consistent with an eligible pupil's individualized education program (IEP).
- b) Notify a parent with the final determination of LEA's decision regarding the pupil's retention within 10 days of the consultation.
- c) Offer supplemental interventions and supports pursuant to AB 86 to a pupil retained pursuant to these provisions.
- d) Offer both of the following to a pupil who is not retained pursuant to this bill specific interventions and support pursuant to AB 86 and access to prior semester courses in which the pupil received a D or F letter grade in the 2020–21 academic year, some other form of credit recovery, or other supports.

This bill, notwithstanding any other law, requires LEAs to implement these provisions and permit an eligible pupil for whom a decision to retain is made by the LEA to be retained in the pupil's 2020–21 grade level for the 2021–22 academic year, and specifies that these provisions are supplemental to and do not replace any existing retention policy, which shall continue to remain operative, as specified.

For pupils enrolled in high school in the 2020–21 academic year only, this bill does all of the following:

- 1) Authorizes that the parent, guardian, or education rights holder of a pupil or, for a pupil 18 years of age or older, the pupil who was enrolled in high school and enrolled in a course during the 2020–21 school year, to apply to the pupil's LEA to have a letter grade earned for that course, as reflected on the pupil's transcript, changed to a Pass or No Pass grade.
- 2) Notwithstanding any other law, requires an LEA to grant such a request, subject to specified criteria, including that the LEA shall not limit the number or type of courses eligible for the grade change.
- 3) Requires the California State University, and encourages private postsecondary educational institutions and the University of California, to do both of the following: accept for admission purposes, and without prejudice, a transcript with a Pass or No Pass grade instead of a letter grade for any coursework for an applicant who had enrolled in a high school in the state during any school year from the 2020–21 school year to the 2023–24 school year, inclusive; and within 15 calendar days of the operative date of the bill, notify the California Department of Education (CDE) if the institution will comply.

This bill requires the CDE to post on its internet website, and provide to LEAs, both of the following: within 15 calendar days of the operative date of the bill, an application template for use by LEAs for the grade change; and within 20 calendar days of the operative date of the bill, a list of postsecondary educational institutions operating in the state that have indicated that they will comply the provision above.

This bill requires LEAs serving high school pupils, within 15 calendar days of the CDE posting the application template, to post a notice on its internet website and provide written notice to its pupils and their parents or guardians of the grade change option, as specified. The bill also requires an LEA to change a transcript and notify the pupil and the pupil's parent or guardian of the change within 15 calendar days of receiving the pupil's application pursuant. Further, the bill specifies that absent a request to change a transcript pursuant to this section, a letter grade earned in the 2020–21 school year shall remain on the pupil's transcript.

This bill requires an LEA to exempt a pupil who was enrolled in the pupil's third or fourth year of high school during the 2020–21 school year and who is not on track to graduate in four years from all coursework and other requirements adopted by the governing body that are in addition to the statewide coursework requirements. This bill also requires an LEA to provide a pupil who was enrolled in the pupil's third or fourth year of high school during the 2020–21 school year, and who is not on track to graduate in the 2020–21 or 2021–22 school years, the opportunity to complete the statewide coursework required for graduation. That opportunity may include, but is not limited to, completion of the coursework through a fifth year of instruction, credit recovery, or other opportunity to complete the required coursework.

Related Legislation: SB 545 (Wilk, 2021) requires school districts to offer specific interventions and supports upon request by a parent to retain their student in the same grade level for the 2021-22 school year. SB 545 is pending in the Assembly.

Staff Comments: AB 86 (Committee on Budget, Chapter 10, Statutes of 2021) appropriates \$4.6 billion to LEAs to provide supplemental instruction and support to students. Allowable uses include extended instructional learning time, accelerated learning strategies, summer school, tutoring or one-on-one support, professional development, and social-emotional wellbeing supports, among others. AB 86 specifically requires LEAs to serve students who have disengaged from school in the 2020-21 school year, for cohort services and learning recovery engagement. Further, existing law requires LEAs to adopt written tiered procedures for the re-engagement of those students.

This bill requires LEAs to discuss the specific interventions and supports established under AB 86 at the consultation and to offer those interventions and supports to the pupil regardless of whether the pupil is retained.

This bill would also require each LEA to develop a temporary process for retention, develop an application, and notify parents or guardians of the option to request their child be retained in the student's 2020-21 academic year grade level for the 2021-22 academic year. Further, this bill requires each LEA to provide notice of the option for students to change passing grades to "pass" on a student's transcript. The extent of these costs are unknown, and would vary according to the actual number of requests that are received. In the 2019-20 academic year, the state had about two million students enrolled in grades 9-12.

This bill could also result in additional, unknown Proposition 98 General Fund costs for LEAs to provide additional opportunities to high school students to complete coursework required for high school graduation. These costs would depend on the number students who have fallen behind during the pandemic and the way in which LEAs provide recovery opportunities. If a school were to enroll a student in a fifth year of high school, then average daily attendance (ADA) could increase for these students resulting in additional LCFF entitlements for the LEAs enrolling those students.

To the extent that the bill's requirements are deemed to be reimbursable by the state and that they overlap with the provisions of AB 86, a portion of the funds provided to LEAs pursuant to that measure could be determined to be offsetting revenues by the Commission on State Mandates.

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