
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair
2021 - 2022 Regular

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Subject: Pupil instruction: retention, grade changes, and exemptions

SUMMARY

This bill, an urgency measure: (1) requires local educational agencies (LEAs), upon receiving a request, to offer the parent a consultation regarding whether a pupil should be retained; (2) creates a process for parents to request that students receive a “pass” or “no pass” instead of a letter grade in the 2020-21 academic year and requires that specified institutions of higher education accept a “pass” for credit for admissions purposes; and (3) requires that students who were in their third or fourth year of high school in the 2020-21 and who are not on track to graduate in the 2020–21 or 2021–22 school years be exempted from local graduation requirements and be given the opportunity to complete the coursework required for graduation.

BACKGROUND

Existing law:

Promotion and retention policies

- 1) 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. (Education Code § 48070)
- 2) 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:
 - a) The results of the statewide standardized assessments in English language arts and mathematics; *or*
 - b) The student’s grades and other indicators of academic achievement designated by the district. (EC § 48070.5)
- 3) 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. (EC § 48070.5)
- 4) 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. (EC § 48070.5)

- 5) Requires the policy to:
 - a) 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.
 - b) 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.
 - c) Indicate the manner in which opportunities for remedial instruction will be provided to students who are recommended for retention or who are identified as being at risk for retention. (EC § 48070.5)
- 6) Authorizes students to be retained for reasons other than those specified in # 2 above if retention is determined to be appropriate for that student, and authorizes LEA governing boards to adopt promotion and retention policies that exceed the criteria described above. (EC § 48070.5)

Expanded Learning Opportunities Grants (AB 86, Committee on Budget, Chapter 10, Statutes of 2021)

- 7) Appropriates \$4.56 billion to LEAs to implement a learning recovery program that, at a minimum, provides:
 - a) Supplemental instruction.
 - b) Support for social and emotional well-being.
 - c) To the maximum extent permissible under the guidelines of the United States Department of Agriculture, meals and snacks. (EC §§ 43521, 43522)
- 8) Requires LEAs to provide these supports and service to, at a minimum:
 - a) Students who are eligible for free or reduced-price meals.
 - b) English learners.
 - c) Foster youth and homeless students.
 - d) Students who are individuals with exceptional needs.
 - e) Students at risk of abuse, neglect, or exploitation.
 - f) Disengaged students.

- g) Students who are below grade level, including, but not limited to:
 - i) Those who did not enroll in kindergarten in the 2020–21 school year.
 - ii) Credit-deficient students.
 - iii) High school students at risk of not graduating.
 - iv) Other students identified by certificated staff. (EC § 43522)
- 9) Requires Expanded Learning Opportunities funds to be spent only for any of the following purposes:
 - a) Extending instructional learning time by increasing the number of instructional days or minutes provided during the school year, providing summer school or intersessional instructional programs, or taking any other action that increases the amount of instructional time or services provided to students based on their learning needs.
 - b) Accelerating progress to close learning gaps through the implementation, expansion, or enhancement of learning supports including, among other things, any of the following:
 - i) Tutoring or other one-on-one or small group learning supports provided by certificated or classified staff.
 - ii) Learning recovery programs and materials designed to accelerate student academic proficiency or English language proficiency, or both.
 - iii) Community learning hubs that provide students with access to technology, high-speed internet, and other academic supports.
 - iv) Supports for credit deficient students to complete graduation or grade promotion requirements and to increase or improve students' college eligibility. (EC § 43522)

Grading requirements

- 10) Requires that when grades are given for any course of instruction taught in a school district, the grade given to each pupil be the grade determined by the teacher of the course and the determination of the pupil's grade by the teacher, in the absence of clerical or mechanical mistake, fraud, bad faith, or incompetency, shall be final. (EC § 49066)
- 11) Prohibits the governing board of the school district and the superintendent of such district from ordering a pupil's grade to be changed unless the teacher who determined such grade is, to the extent practicable, given an opportunity to state orally, in writing, or both, the reasons for which such grade was given and is, to

the extent practicable, included in all discussions relating to the changing of such grade. (EC § 49066)

- 12) Requires the governing board of each school district to prescribe regulations requiring the evaluation of each pupil's achievement for each marking period and requiring a conference with, or a written report to, the parent of each pupil whenever it becomes evident to the teacher that the pupil is in danger of failing a course. States that the refusal of the parent to attend the conference, or to respond to the written report, may not preclude failing the pupil at the end of the grading period. (EC § 49067)
- 13) Authorizes the governing board of any school district to adopt regulations authorizing a teacher to assign a failing grade to any pupil whose absences from the teacher's class that are not excused equal or exceed a maximum number specified by the board. (EC § 49067)

Exemption from Local graduation requirements

- 14) Authorizes school districts to impose additional graduation requirements beyond the state-mandated graduation requirements. (EC § 51225.3)
- 15) Requires school districts to exempt students in foster care, those who are homeless, students who transfer from juvenile court schools, students from military families, migrant students, and students participating in newcomer programs who transfer between schools any time after the completion of the students' second year of high school from all coursework and other requirements that are in addition to state graduation requirements, unless a school district makes a finding that a student is reasonably able to complete the school district's graduation requirements in time to graduate from high school by the end of the student's fourth year of high school. (EC § 51225.1)

ANALYSIS

This bill, an urgency measure: (1) requires LEAs, upon receiving a request, to offer the parent a consultation regarding whether a pupil should be retained; (2) creates a process for parents to request that students receive a "pass" or "no pass" instead of a letter grade in the 2020-21 academic year and requires that specified institutions of higher education accept a "pass" for credit for admissions purposes; and (3) requires that students who were in their third or fourth year of high school in the 2020-21 and who are not on track to graduate in the 2020-21 or 2021-22 school years be exempted from local graduation requirements and be given the opportunity to complete the coursework required for graduation. Specifically, this bill:

Regarding retention

- 1) 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.

- 2) Requires the consultation to occur within 30 days of receiving the request and to include all of the following:
 - a) Discussion of all available learning recovery options, including both of the following:
 - i) Specific interventions and supports pursuant to AB 86.
 - ii) 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 support.
 - b) 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.
 - c) Discussion about research on the effects of pupil retention and the types of interventions and supports that have been shown to be beneficial to pupils.
- 3) Requires an LEA to do all of the following:
 - a) Ensure that a retention decision is consistent with an eligible pupil's individualized education program.
 - 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:
 - i) Specific interventions and support pursuant to AB 86.
 - ii) 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.
- 4) Notwithstanding any other law or retention policy, 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 and do not replace any existing law or retention policy.
- 5) Provides the following definitions:
 - a) "Eligible pupil" means either of the following:

- i) A pupil who has received deficient grades for at least one-half of the pupil's coursework in the 2020–21 academic year. For purposes of this provision, a deficient grade is a D, F, a No Pass, or an equivalent as determined by the LEA.
 - ii) A pupil who has both deficient grades as described above and has been identified for reengagement pursuant to subdivision (f) of Section 43504, as it read on September 18, 2020.
 - b) "Local educational agency" means a school district, county office of education, or charter school.
 - c) "Parent" means the natural or adoptive parent or guardian, the person having legal custody, or other educational rights holder.
- 6) Prohibits a pupil enrolled in grade 12 during the 2020–21 school year from being eligible for retention under these provisions.

Regarding grade changes

- 7) For pupils enrolled in high school in the 2020–21 academic year only, does all of the following:
- a) 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.
 - b) Notwithstanding any other law, requires an LEA to grant such a request, subject to all of the following:
 - i) The LEA shall not limit the number or type of courses eligible for the grade change.
 - ii) The grade change shall not negatively affect the pupil's grade point average.
 - iii) Notwithstanding any other law, the grade change shall not result in the forfeiture of the pupil's eligibility or entitlement to state or institutional student financial aid.
 - c) Requires the California State University, and encourages private postsecondary educational institutions and the University of California, to do both of the following:
 - i) 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.

- ii) Within 15 calendar days of the operative date of the bill, notify the California Department of Education (CDE) if the institution will comply.
- 8) Requires the CDE to post on its internet website, and provide to LEAs, both of the following:
- a) Within 15 calendar days of the operative date of the bill, an application template for use by LEAs for the grade change described above.
 - b) 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.
- 9) 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 described above.
- 10) Requires the notice to include all of the following:
- a) The application to request a grade change.
 - b) The list of postsecondary educational institutions complying with the provisions.
 - c) A statement that some postsecondary educational institutions, including those in other states, may not accept a Pass or No Pass grade instead of a letter grade for admission purposes.
- 11) Requires a pupil to submit an application to their LEA within 15 calendar days of the LEA posting a notice on its internet website and providing written notice to its pupils and their parents or guardians. An LEA shall not accept applications after that date.
- 12) 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.
- 13) 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.

Exemptions from local graduation requirements

- 14) Notwithstanding any other law, requires an LEA to do both of the following:

- a) 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.
- b) 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.

Other provisions

- 15) Specifies that this act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect, and that the facts constituting the necessity are: "In order to provide important guidance to local educational agencies about standards and procedures for implementing grading policies and supports for their pupils, it is necessary that this act take effect immediately."

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "As a result of the Stay at Home Order, many school districts made the sudden transition to distance learning models that often relied on the use of electronic devices and internet access. Many students and families were unequipped for the shift in instructional model. Inadequate or lack of internet connectivity negatively affects the educational outcomes of students. According to the Public Policy Institute of California, 16% of school-aged children in California do not have internet access at home, and 27% do not have a high-speed connection. In addition, nearly 10% access the internet with a cellular data plan, which typically results in slower speeds and suggests they are relying solely on a smartphone or tablet. As distance learning has continued, low-income and parents of color are much more likely to report that their child is distance learning full-time when compared to white and higher income families, despite low-income parents in California being the most likely to rate distance learning as unsuccessful when compared to higher income parents.

"Given the unprecedented economic, social and health impacts of COVID-19, many older students have also faced added family responsibilities that detract from completing their education. This includes taking care of an ill family member, working to supplement the household income, and taking on childcare responsibilities. In one notable example, CalMatters reported on students that had turned to agriculture work to supplement their family income when school closures left them with inadequate educational and technological resources. Additionally, reporting by Capitol Public Radio found that school districts were having trouble making contact with students and families in the weeks that

followed the initial closures. For one school district, nearly 1,600 students had not been contacted nearly a month after the closures began.

“These findings indicate that the likelihood of engaging in distance learning is lower for families from low-income backgrounds and for students of color. The inability to consistently engage with school ultimately results in higher rates of student absenteeism. According to Policy Analysis for California Education (PACE) at Stanford University, absenteeism will most deeply affect the academic and social-emotional outcomes of low-income and other disadvantaged students.

“Nearly nine months since the transition to distance learning, mounting evidence indicates that students have experienced learning loss, are falling behind on their academic progress, and are underperforming. These setbacks are especially pronounced amongst low-income students and students of color.

“Assembly Bill 104 offers students and families alternative options to completing a pupil’s education while holding pupils harmless from circumstances that have ensued as a result of the COVID-19 pandemic.”

- 2) ***Pandemic’s effect on student learning.*** According to a March 2021 report by Policy Analysis for California Education (PACE), students’ development of oral reading fluency (ORF) “largely stopped in spring 2020 following the onset of the COVID-19 pandemic. In fall 2020, students’ gains in reading were stronger and similar to prepandemic rates. However, fall gains were insufficient to recoup spring losses; overall, students’ ORF in second and third grade is approximately 30 percent behind expectations. We also observe inequitable impact: students at lower achieving schools are falling farther behind and 10 percent of students were not assessed this fall. While growth in ORF was stronger in the fall than in the spring, measures to address accumulated learning losses and to support students falling behind are needed.”

The report cautions that “gaps in ORF that emerge now may lead to gaps in other subjects over time if problems in students’ ORF interfere with content learning in later grades. And new gaps may emerge: for example, with enrollments down in preschool and kindergarten programs this year, it is possible that incoming students in 2021–22 will start behind.”

- 3) ***Increase in failing grades.*** The California Department of Education issued guidance in 2020, stating that “there is nothing in the California Education Code which governs whether a class can be offered as credit/no credit, pass/fail or a modified A–D.” The University of California, California State University, the California Community Colleges, and the Association of Independent Colleges and Universities pledged to accept credit/no credit grades in lieu of letter grades for all courses, including A–G courses, completed in winter/spring/summer 2020, and that grades of credit/no credit would not affect the UC or CSU calculations of GPA. <https://www.cde.ca.gov/ls/he/hn/gradegraduationfaq.asp>

Several news sources reported an increase in failing grades, and that many school districts altered grading policies so that students’ grades could only improve from where they were at just before the stay-at-home order, and others

switched to pass/fail systems. <https://edsources.org/2021/california-teachers-grapple-with-grading-nearly-a-year-after-initial-school-closures/648376>; <https://www.latimes.com/california/story/2020-11-02/failing-grades-surge-poor-la-students-covid-19>

- 4) **Enrollment declines in 2020-21.** According to CDE, overall enrollment is down from 6,163,001 in 2019–2020 to 6,002,523 in 2020–2021, a decrease of more than 160,000 students and 2.6 percent from the prior year. This follows a modest, steady decline in public school enrollment statewide since 2014–15. Specifically, 88 percent of the statewide drop in enrollment from the prior year occurred in kindergarten to sixth grade and the largest grade-level decreases in the enrollment data can be found in kindergarten and in grade six. Enrollment increases from the prior year occurred in grades 5, 9, 11, and 12.
- 5) **Expanded Learning Opportunities Grant programs.** AB 86 (Committee on Budget, Chapter 10, Statutes of 2021) appropriates \$4.6 billion to LEAs to provide supplemental instruction and support to students. Specified 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.

- 6) **Research on retention.** As noted in the Assembly Education Committee's analysis, a summary of research on grade retention (Hanover Research, 2013) found little benefit and significant risks of retention:
 - a) Several large-scale statistical analyses have established retention as a strong predictor of student dropout. Estimates vary, with some research suggesting that retention increases the risk that students will drop out of school by 20% to 50%, and other research suggesting that retained students are 2 to 11 times more likely to drop out.
 - b) The majority of grade retention research suggests that academic achievement may increase during the year immediately following retention, but that these positive effects diminish significantly over time, with some suggestion that the positive effects of retention disappear within two years.
 - c) Effects on social-emotional outcomes are less clear. A 2009 RAND meta-analysis found that 86% of analyses examining socio-emotional outcomes found no statistically significant differences between retained students and

their low-achieving, promoted peers.

A 2009 RAND study which examined the effect of New York City's test-based grade promotion and retention policy for three cohorts of 5th-grade students found that in support services provided under the policy helped students meet promotion criteria and that, overall, few students were retained (1% in the final cohort). It also found that the small number who were retained did not report negative socioemotional effects.

Researchers caution policymakers to avoid the use of a “retention-promotion” dichotomy, instead recommending more comprehensive measures to support students. Researchers note that while recent research suggests that retention policies in New York and Florida have had a positive impact on student achievement, this may be due to supplementing with rigorous, multidimensional intervention efforts, including parental engagement and remedial instruction.

- 7) ***Decision to retain a student.*** Existing law requires the governing board of each LEA to adopt policies regarding student promotion and retention and requires policies 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* grades (and other indicators of academic achievement) or statewide standardized assessments in 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.

It appears that statutes attempt to make the decision to retain a student objective. Retention and promotion policies adopted by LEAs vary with respect to clearly delineating who may recommend retention and who makes the final determination; many do not make this distinction clear.

This bill, in light of the Covid-19 pandemic, offers pupils and parents a temporary, supplemental process to initiate a discussion about whether retention may be appropriate, but does not require an LEA to retain a pupil. However, this supplemental process is just that, supplemental. All existing LEA retention policies continue to remain in effect and LEAs should continue to retain pupils pursuant to those policies, in addition to this temporary, supplemental process.

- 8) ***Technical amendments.*** ***Staff recommends that the bill be amended*** in order to clarify that existing retention policies remain in effect, clarify timelines, create a record of requests, and to eliminate a superfluous provision. Staff recommends the following amendments:

- 48071: “(b)(1) Notwithstanding any other law ~~or retention policy~~, local educational agency shall implement this section and permit an eligible pupil for whom a decision to retain is made by the local educational agency to be retained in the pupil's 2020–21 grade level for the 2021–22 academic year.

~~“Except as provided in paragraph (1), the requirements of this section are supplemental to, and do not replace, any existing law or retention policy, which shall continue to remain operative for all school years.”~~

- Add “calendar” before all deadlines that are based on days throughout the bill.
- Require a request for consultation to be made in writing.
- Because all pupils that would qualify as an “eligible pupil” pursuant to Section 48071(a)(1)(A)(ii) would also qualify as an eligible pupil pursuant to Section 48071(a)(1)(A)(i), delete Section 48071(a)(1)(A)(ii).

- 9) ***High school athletic concerns.*** Concern has been raised that some pupils who participate in high school athletics may wish to be retained due to sports not competing during portions of the Covid-19 pandemic. California Interscholastic Federation (CIF) bylaws appear to mitigate this concern. CIF Bylaw 204 establishes the “Eight Consecutive Semester Requirement,” which provides, in part:

“A student who first enters the 9th grade of any school following the student’s completion of the 8th grade in any school may be eligible for athletic competition during a maximum period of time that is not to exceed eight consecutive semesters following the initial enrollment in the 9th grade of any school, and said eligibility must be used during the student’s first eight consecutive semesters of enrollment at that school or any other school.”

However, CIF bylaws also allow for a “hardship waiver” from these requirements, subject to certain conditions. Regardless, it also seems likely that in order to qualify as an “eligible pupil” for retention under the bill, a pupil would not qualify academically for athletic competition, due to requirement in CIF bylaw 205 that pupils maintain a 2.0 grade point average.

- 10) ***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 on the Senate floor.

SUPPORT

California Language Teachers’ Association

OPPOSITION

None received

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