
THIRD READING

Bill No: AB 104
Author: Lorena Gonzalez (D), et al.
Amended: 6/2/21 in Senate
Vote: 27 - Urgency

SENATE EDUCATION COMMITTEE: 6-0, 5/27/21
AYES: Leyva, Ochoa Bogh, Cortese, Dahle, Glazer, Pan
NO VOTE RECORDED: McGuire

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/10/21
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, Wieckowski

ASSEMBLY FLOOR: 77-0, 4/15/21 - See last page for vote

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

SOURCE: Author

DIGEST: 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, excluding a pupil in grade 12, 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.

ANALYSIS:

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)

Grading Requirements

- 7) 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)
- 8) 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)
- 9) 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)
- 10) 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

- 11) Authorizes school districts to impose additional graduation requirements beyond the state-mandated graduation requirements. (EC § 51225.3)
- 12) 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)

This bill, an urgency measure, (1) requires LEAs, upon receiving a request, to offer the parent a consultation regarding whether a pupil, excluding a pupil in grade 12, 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 written 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 calendar days of receiving the request for a consultation 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 calendar 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) Requires, notwithstanding any other law, 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 law or retention policy, which this bill requires continues to remain operative for all school years.
- 5) Provides the following definitions:
 - a) “Eligible pupil” means either a pupil, except a pupil enrolled in grade 12 during the 2020–21 school year, 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.
 - 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) Provides that for pupils enrolled in high school in the 2020–21 academic year only, this bill 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 (CSU), 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 this 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 this bill, an application template for use by LEAs for the grade change described above.
 - b) Within 20 calendar days of the operative date of this 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) Requires, notwithstanding any other law, 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.”

Comments

- 1) *Need for the bill.* According to the author, “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) *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 6. Enrollment increases from the prior year occurred in grades 5, 9, 11, and 12.
- 4) *Expanded Learning Opportunities Grant programs.* AB 86 (Committee on Budget, Chapter 10, Statutes of 2021) appropriated \$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 required 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.

- 5) *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:

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 two to 11 times more likely to drop out.

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.

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 fifth-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.

- 6) *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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- By requiring 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.
- This bill's requirement for CDE 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.

SUPPORT: (Verified 6/15/21)

California Association of Student Councils
California Language Teachers' Association
California State PTA
Children Now
Parent Institute for Quality Education
Partnership for Children & Youth
Public Advocates

OPPOSITION: (Verified 6/15/21)

None received

ASSEMBLY FLOOR: 77-0, 4/15/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Wicks, Wood, Rendon
NO VOTE RECORDED: Medina

Prepared by: Brandon Darnell / ED. / (916) 651-4105
6/16/21 14:52:03

**** END ****