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CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 104

Introduced by Assembly Member Lorena Gonzalez
(Coauthors: Assembly Members McCarty, Petrie-Norris, and Ting)

December 11, 2020

An act to add Sections 48071, 49066.5, and 51225 to the Education Code, relating to pupil instruction, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 104, as amended, Lorena Gonzalez. Pupil instruction: retention, grade changes, and exemptions.

(1) Existing law requires the governing board of a school district and a county superintendent of schools to adopt policies regarding pupil promotion and retention, and requires a pupil to be promoted or retained only as provided for in those policies.

For the 2021–22 academic year, this bill would require a school district, county office of education, or charter school to implement an interim policy regarding the retention of pupils who, in the 2020–21 academic year, had enrolled in any grade or who were entering kindergarten. The bill would require, on or before ~~July 1~~, *June 15*, 2021, the school district, county office of education, or charter school to notify those pupils' parents of their authority to request the pupil be retained

in the pupil's 2020–21 grade level for the 2021–22 academic year, as specified. The bill would require a school district, county office of education, or charter school to consult with the requesting parent, the pupil, and the pupil's teacher, and would require consideration of the pupil's academic data, any other information relevant to whether retention is in the pupil's best interests, academically and socially, and assurances that a retention decision is consistent with the pupil's individualized education program. The bill would require a school district, county office of education, or charter school to notify the requesting parent of its retention decision on or before ~~August 1, July 15, 2021~~. By imposing new duties on school districts, county offices of education, and charter schools, the bill would impose a state-mandated local program.

(2) Existing law requires the governing board of a school district to prescribe regulations requiring the evaluation of a pupil's achievement for each marking period. When a teacher provides the pupil with a grade for a course, existing law requires the grade, in the absence of clerical or mechanical mistake, fraud, bad faith, or incompetency, to be final. Existing law prohibits the governing board of a school district or the superintendent of the district from ordering a change in the pupil's grade unless the teacher who determined the grade is given an opportunity, to the extent practicable, to be included in all discussions relating to the grade change.

This bill would authorize the parent, guardian, or education rights holder of a pupil, or, for a pupil who is 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 school district, county board of education, or charter school to change the letter grade for that course to a Pass or No Pass grade on the pupil's transcript. The bill would require the school district, county office of education, or charter school to make the requested change, as specified. The bill would require the California State University, and encourage private postsecondary institutions and the University of California, to accept, and to notify the State Department of Education whether the institution will accept, those changed transcripts for admission purposes. The bill would require the department to develop the application for the grade change request and to provide related assistance to school districts, county offices of education, and charter schools. By requiring local educational ~~entities~~ *agencies* to perform specified duties regarding the grade change option, the bill would impose a state-mandated local program.

(3) Existing law requires a school district or charter school to exempt certain categories of pupils who transfer between schools any time after completion of the 2nd year of high school, or who participate in a specified newcomer program, from all coursework and other requirements adopted by the governing body of the school district or charter school that are in addition to certain statewide coursework requirements unless the school district or charter school makes a finding that the pupil is reasonably able to complete the graduation requirements of the school district or charter school in time to graduate from high school by the end of the pupil's 4th year of high school. Existing law requires a school district or charter school to take specified actions if it determines the pupil is reasonably able to complete those graduation requirements within the pupil's 5th year of high school.

This bill would require a school ~~district or district~~, charter ~~school school~~, or county office of education to exempt all pupils who, in the 2020–21 school year, were in their 3rd or 4th year of high school from all coursework and other requirements adopted by the governing body of a school ~~district or district~~, charter ~~school school~~, or county office of education that are in addition to the statewide coursework requirements, and to separately provide, for all pupils who, in the 2020–21 school year, were in their 3rd or 4th year of high school and who are not on track to graduate in the 2020–21 or 2021–22 school year, the opportunity to complete the statewide coursework required for graduation, which may include, among other opportunities for completion of the coursework, a 5th year of instruction. By requiring ~~school districts and charter schools~~ local educational agencies to perform additional duties in complying with the exemption requirements, the bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 48071 is added to the Education Code,
2 to read:

3 48071. (a) For purposes of this section, the following
4 definitions apply:

5 (1) “Eligible pupil” means either a pupil who had enrolled in a
6 school serving any of grades 1 to 12, inclusive, in the 2020–21
7 school year or a child who was entering kindergarten in the
8 2020–21 school year, whichever applies.

9 (2) “Local educational agency” means a school district, county
10 office of education, or charter school.

11 (3) “Parent” means the natural or adoptive parent or guardian,
12 the person having legal custody, or other educational rights holder.

13 (b) For the 2021–22 academic year, notwithstanding any other
14 law or retention policy, a local educational agency shall implement
15 an interim retention policy. The policy shall permit an eligible
16 pupil for whom a decision to retain is made by the local educational
17 agency to be retained in the pupil’s 2020–21 grade level for the
18 2021–22 academic year.

19 (c) On or before ~~June 15, 1~~, 2021, a local educational agency
20 shall develop all of the following regarding the interim retention
21 policy described in subdivision (b):

22 (1) An application for the pupil’s parent to request the pupil’s
23 retention for the 2021–22 academic year.

24 (2) Processes for determining if a pupil should be retained,
25 including processes for each of the following:

26 (A) Consultation with the requesting parent, the pupil, and the
27 pupil’s teacher of record. This consultation shall include a
28 discussion of the risks and benefits of retaining a pupil in a grade.

29 (B) Consideration of the pupil’s academic data and any other
30 information relevant to whether retention is in the pupil’s best
31 interests, academically and socially.

32 (C) Assurances that a retention decision is consistent with the
33 pupil’s individualized education program.

34 (3) Deadlines, including deadlines for a parent to submit a
35 retention application, for a consultation to be completed, and for
36 the local educational agency to make a retention decision. The
37 deadlines shall be consistent with subdivisions (d) and (e).

1 (d) On or before ~~July 1~~, *June 15*, 2021, a local educational
2 agency shall provide written notice of the interim retention policy
3 described in this section to the parents of eligible pupils and shall
4 post the notice on the local educational agency’s internet website.
5 The notice shall include all of the following:

6 (1) A copy of the application described in paragraph (1) of
7 subdivision (c).

8 (2) An explanation of the processes for determining if a pupil
9 should be retained, including the consultation and consideration
10 described in paragraph (2) of subdivision (c).

11 (3) The deadlines described in paragraph (3) of subdivision (c).

12 (e) On or before ~~August 1~~, *July 15*, 2021, a local educational
13 agency shall notify a parent who has submitted an application
14 under this section of the local educational agency’s decision
15 regarding the pupil’s retention.

16 (f) Notwithstanding any other law, a pupil with a positive
17 retention determination shall be permitted to enroll in the pupil’s
18 2020–21 grade level for the 2021–22 academic year.

19 SEC. 2. Section 49066.5 is added to the Education Code, to
20 read:

21 49066.5. (a) (1) This section applies only to pupils enrolled
22 in high school in the 2020–21 academic year.

23 (2) For purposes of this section, “local educational agency”
24 means a school district, county office of education, or charter
25 school.

26 (b) The parent, guardian, or education rights holder of a pupil
27 or, for a pupil 18 years of age or older, the pupil who was enrolled
28 in high school and enrolled in a course during the 2020–21 school
29 year may apply to the pupil’s local educational agency to have a
30 letter grade earned for that course, as reflected on the pupil’s
31 transcript, changed to a Pass or No Pass grade.

32 (c) Notwithstanding any other law, a local educational agency
33 shall grant a request described in subdivision (b). All of the
34 following shall apply to the granting of the request:

35 (1) Subject to the conditions in subdivision (b), the local
36 educational agency shall not limit the number or type of courses
37 eligible for the grade change.

38 (2) The grade change shall not negatively affect the pupil’s
39 grade point average.

1 (3) Notwithstanding any other law, the grade change shall not
 2 result in the forfeiture of the pupil’s eligibility or entitlement to
 3 state or institutional student financial aid.

4 (d) The California State University shall, and private
 5 postsecondary educational institutions and the University of
 6 California are encouraged to, do both of the following:

7 (1) Accept for admission purposes, and without prejudice, a
 8 transcript with a Pass or No Pass grade instead of a letter grade
 9 for any coursework described in subdivision (b) for an applicant
 10 who had enrolled in a high school in the state during any school
 11 year from the 2020–21 school year to the 2023–24 school year,
 12 inclusive.

13 (2) ~~On or before April 15, 2021, Within 15 calendar days of the~~
 14 ~~operative date of the act that added this section,~~ notify the
 15 department if the institution will comply with paragraph (1).

16 (e) ~~On or before May 1, 2021, the~~ The department shall post on
 17 its internet website, and provide to local educational agencies, both
 18 of the following:

19 (1) ~~At~~ Within 15 calendar days of the operative date of the act
 20 that added this section, an application template for use by local
 21 educational agencies for the grade change described in subdivision
 22 (b).

23 (2) ~~A~~ Within 20 calendar days of the operative date of the act
 24 that added this section, a list of postsecondary educational
 25 institutions operating in the state that have indicated, pursuant to
 26 paragraph (2) of subdivision (d), that they will comply with
 27 paragraph (1) of subdivision (d).

28 (f) ~~On or before June 15, 2021, Within 15 calendar days of the~~
 29 ~~department posting the application template pursuant to paragraph~~
 30 ~~(1) of subdivision (e),~~ a local educational agency serving high
 31 school pupils shall post a notice on its internet website and provide
 32 written notice to its pupils and their parents or guardians of the
 33 grade change option described in subdivision (b). The notice shall
 34 include all of the following:

- 35 (1) The application to request a grade change.
- 36 (2) The list of postsecondary educational institutions described
 37 in paragraph (2) of subdivision (e).
- 38 (3) A statement that some postsecondary educational institutions,
 39 including those in other states, may not accept a Pass or No Pass
 40 grade instead of a letter grade for admission purposes.

1 (g) A pupil shall submit an application pursuant to subdivision
2 (b) to the pupil’s local educational agency ~~on or before July 1,~~
3 ~~2021.~~ *within 15 calendar days of the local educational agency,*
4 *pursuant to subdivision (f), posting a notice on its internet website*
5 *and providing written notice to its pupils and their parents or*
6 *guardians. A local educational agency shall not accept applications*
7 *after that date.*

8 (h) A local educational agency shall change a transcript pursuant
9 to subdivision (c) and shall notify the pupil and the pupil’s parent
10 or guardian of the change ~~on or before July 15, 2021.~~ *within 15*
11 *calendar days of receiving the pupil’s application pursuant to*
12 *subdivision (b).*

13 (i) Absent a request to change a transcript pursuant to this
14 section, a letter grade earned in the 2020–21 school year shall
15 remain on the pupil’s transcript.

16 SEC. 3. Section 51225 is added to the Education Code, to read:

17 51225. (a) For purposes of this section, the following
18 definitions apply:

19 (1) “Governing body” means the governing board of a school
20 ~~district or district,~~ the governing body of a charter school, *or a*
21 *county board of education,* as applicable.

22 (2) “Local educational agency” means a school ~~district or~~
23 ~~district,~~ *charter school, school, or county office of education.*

24 (b) Notwithstanding any other law, a local educational agency
25 shall do both of the following:

26 (1) Exempt a pupil who was enrolled in the pupil’s third or
27 fourth year of high school during the 2020–21 school year from
28 all coursework and other requirements adopted by the governing
29 body that are in addition to the statewide coursework requirements
30 specified in Section 51225.3.

31 (2) Provide a pupil who was enrolled in the pupil’s third or
32 fourth year of high school during the 2020–21 school ~~year~~ *year;*
33 and who is not on track to graduate in the 2020–21 or 2021–22
34 school ~~years~~ *years,* the opportunity to complete the statewide
35 coursework required for graduation pursuant to Section 51225.3,
36 which opportunity may include, but is not limited to, completion
37 of the coursework through a fifth year of instruction, credit
38 recovery, or other opportunity to complete the required coursework.

39 SEC. 4. If the Commission on State Mandates determines that
40 this act contains costs mandated by the state, reimbursement to

1 local agencies and school districts for those costs shall be made
2 pursuant to Part 7 (commencing with Section 17500) of Division
3 4 of Title 2 of the Government Code.

4 SEC. 5. This act is an urgency statute necessary for the
5 immediate preservation of the public peace, health, or safety within
6 the meaning of Article IV of the California Constitution and shall
7 go into immediate effect. The facts constituting the necessity are:

8 In order to provide important guidance to local educational
9 agencies about standards and procedures for implementing grading
10 policies and supports for their pupils, it is necessary that this act
11 take effect immediately.