

Assembly Bill No. 104

CHAPTER 41

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.

[Approved by Governor July 1, 2021. Filed with Secretary of State July 1, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 104, 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. Until June 30, 2023, existing law makes certain funds available to school districts, county offices of education, charter schools, and state special schools for expenditure by August 31, 2022, for certain activities, including offering supplemental instruction and support, as prescribed.

For the 2021–22 academic year, this bill would require a school district, county office of education, or charter school to implement a supplemental policy regarding the retention of pupils who, in the 2020–21 academic year, received deficient grades, as specified, for at least $\frac{1}{2}$ of the pupil's coursework, except for pupils enrolled in grade 12 during the 2020–21 academic year. The bill would require a school district, county office of education, or charter school, as part of that policy and within 30 calendar days of receiving a written retention consultation request from a parent, to conduct the consultation with the parent, the pupil, the administrator, and a teacher, and would require the consultation to include a discussion of all available learning recovery options, research on the effects of retention and the benefits of particular interventions and supports, 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. The bill would require a retention decision to be consistent with a pupil's individualized education program. The bill would require, regardless of the retention decision, the pupil to be offered specific interventions and supports. The bill would also require, if the decision is to not retain the pupil, the pupil to be offered 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 as specified. The bill would require a school district, county office of education, or charter school to notify the requesting parent of its retention decision within 10 calendar days of the

consultation. 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 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, charter 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 and who are not on track to graduate in 4 years from all coursework and other requirements adopted by the governing body of a school district, charter 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 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.

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

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

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

(1) (A) Except as provided in subparagraph (B), “eligible pupil” means either of the following:

(1) (A) Except as provided in subparagraph (B), “eligible pupil” means 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 paragraph, a deficient grade is a D, F, a No Pass, or an equivalent as determined by the local educational agency.

(B) A pupil enrolled in grade 12 during the 2020–21 school year shall not be eligible for retention under this section.

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

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

(b) (1) Notwithstanding any other law, a local educational agency shall implement this section and shall 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.

(2) The requirements of this section are supplemental to, and do not replace, any existing retention policy, which shall continue to remain operative for all school years.

(c) A local educational agency, upon receiving a written request from the parent of an eligible pupil to retain the pupil for the 2021–22 school year, shall offer the parent a consultation with the parent, the pupil, the administrator, and a teacher. A consultation shall occur within 30 calendar

days of receiving the written request for a consultation and shall include all of the following:

(1) Discussion of all available learning recovery options, including both of the following:

(A) Specific interventions and supports pursuant to Part 24.6 (commencing with Section 43520) of Division 3.

(B) 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 pursuant to Section 51225.

(2) 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.

(3) 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.

(d) A local educational agency shall ensure that a retention decision is consistent with an eligible pupil’s individualized education program.

(e) A local educational agency shall notify a parent with the final determination of the local educational agency’s decision regarding the pupil’s retention within 10 calendar days of the consultation described in subdivision (c).

(f) A pupil retained pursuant to this section shall also be offered supplemental interventions and supports pursuant to Part 24.6 (commencing with Section 43520) of Division 3.

(g) A pupil who is not retained pursuant to this section shall be offered both of the following:

(1) Specific interventions and support pursuant to Part 24.6 (commencing with Section 43520) of Division 3.

(2) 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 pursuant to Section 51225.

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

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

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

(b) 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 may apply to the pupil’s local educational agency to have a letter grade earned for that course, as reflected on the pupil’s transcript, changed to a Pass or No Pass grade.

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

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

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

(3) 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.

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

(1) Accept for admission purposes, and without prejudice, a transcript with a Pass or No Pass grade instead of a letter grade for any coursework described in subdivision (b) 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.

(2) Within 15 calendar days of the operative date of the act that added this section, notify the department if the institution will comply with paragraph (1).

(e) The department shall post on its internet website, and provide to local educational agencies, both of the following:

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

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

(f) Within 15 calendar days of the department posting the application template pursuant to paragraph (1) of subdivision (e), a local educational agency serving high school pupils shall 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 in subdivision (b). The notice shall include all of the following:

(1) The application to request a grade change.

(2) The list of postsecondary educational institutions described in paragraph (2) of subdivision (e).

(3) 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.

(g) A pupil shall submit an application pursuant to subdivision (b) to the pupil's local educational agency within 15 calendar days of the local educational agency, pursuant to subdivision (f), posting a notice on its internet website and providing written notice to its pupils and their parents or guardians. A local educational agency shall not accept applications after that date.

(h) A local educational agency shall change a transcript pursuant to subdivision (c) and shall notify the pupil and the pupil's parent or guardian of the change within 15 calendar days of receiving the pupil's application pursuant to subdivision (b).

(i) 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.

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

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

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

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

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

(1) 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 specified in Section 51225.3.

(2) 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 pursuant to Section 51225.3, which 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.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 5. 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. 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.