



Chapter 6: Student Promotion and Retention

SECTION A: STUDENTS WITH SPECIAL NEEDS

SECTION B: FREQUENTLY ASKED QUESTIONS

Introduction

Retention of students has had a place in education debate for many years. With the passage of AB 1626, AB 1639 and AB 1370 in January 1999, the issues of social promotion and retention are once again issues for local education agencies (LEAs). This legislation is a radical departure from customary promotion of students from one grade to the next, commonly referred to as social promotion. The current legislation requires LEAs to develop criteria for retaining students and to implement intensive interventions for those students that meet district-developed criteria for retention. LEAs are required to develop a program for specific grade levels that identifies these students as early as possible in the school year and provides opportunities for them to improve their academic skills. For students with special needs who receive the core curriculum, the same academic standards and frameworks shall be accessed. It is the responsibility of the IEP team to determine if the special education student will need accommodations, supports, or services to achieve these standards.

E.C. 48070. The governing board of each school district and each county superintendent of schools shall adopt policies regarding pupil promotion and retention. A pupil shall be promoted or retained only as provided in the policies adopted pursuant to this article.

E.C. 48070.5(a)-(j). (a) In addition to the policy adopted pursuant to Section 48070, the governing board of each school district and each county board of education shall, in those applicable grade levels, approve a policy regarding the promotion and retention of pupils between the following grades:

- 1) Between second grade and third grade.*
- 2) Between third grade and fourth grade.*
- 3) Between fourth and fifth grade.*
- 4) Between the end of the intermediate grades and the beginning of middle school grades which typically occurs between sixth grade and seventh*

grade, but may vary depending upon the grade configuration of the school or school district.

- 5) *Between the end of the middle school grades and the beginning of high school which typically occurs between eighth grade and ninth grade, but may vary depending upon the grade configuration of the school or school district.*
 - a. *The policy shall provide for the identification of pupils 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:*
 - 1) *The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 and the minimum levels of proficiency recommended by the State Board of Education pursuant to Section 60648.*
 - 2) *The pupil's grades and other indicators of academic achievement designated by the district.*
 - c. *The policy shall base the identification of pupils pursuant to subdivision (b) at the grade levels identified pursuant to paragraph (1) and (2) of subdivision (a) primarily on the basis of the pupil's level of proficiency in reading. The policy shall base the identification of pupils pursuant to subdivision (b) at the grade levels identified pursuant to paragraphs (3) through (5) of subdivision (a) on the basis of the pupil's level of proficiency in reading, English language arts, and mathematics.*
 - d. *(1) If either measure identified in paragraph (1) or (2) of subdivision (b) identifies that a pupil is performing below the minimum standard for promotion, the pupil shall be retained in his or her current grade level unless the pupil's regular classroom teacher determines in writing that retention is not the appropriate intervention for the pupil's academic deficiencies. This written determination shall specify the reasons that retention is not appropriate for the pupil and shall include recommendations for interventions other than retention that in the opinion of the teacher are necessary to assist the pupil to attain acceptable levels of academic achievement. If the teacher's recommendation to promote is contingent upon the pupil's participation in a summer school or interim session remediation program, the pupil's academic performance shall be reassessed at the end of the remediation program, and the decision to retain or promote the pupil shall be reevaluated at that time. The teacher's evaluation shall be provided to and discussed with the pupil's parent or guardian and the school principal before any final determination of pupil retention or promotion.*

(2) If the pupil does not have a single regular classroom teacher, the policy adopted by the school district shall specify the teacher or teachers responsible for the promotion or retention decision.

- e. *The policy shall provide for parental notification when a pupil is identified as being at risk of retention. This notice shall be provided as early in the school year as practicable. The policy shall provide a pupil's parent or guardian the opportunity to consult with the teacher or teachers responsible for the decision to promote or retain the pupil.*
- b. *The policy shall provide a process whereby the decision of the teacher to retain or promote a pupil may be appealed. If an appeal is made, the burden shall be on the appealing party to show why the decision of the teacher should be overruled.*
- c. *The policy shall provide that pupils who are at-risk of being retained in their current grade be identified as early in the school year, and as early in their school careers, as practicable.*
- d. *The policy shall indicate the manner in which opportunities for remedial instruction will be provided to pupils who are recommended for retention or who are identified as being at risk for retention.*
- e. *The policy adopted pursuant to this section shall be adopted at a public meeting of the governing board of the school district.*
- f. *Nothing in this section shall be construed to prohibit the retention of a pupil not included in grade levels identified pursuant to subdivision (a), or for reasons other than those specified in subdivision (b), if such retention is determined to be appropriate for that pupil. Nothing in this section shall be construed to prohibit a governing board from adopting promotion and retention policies that exceed the criteria established in this section.*

LEAs have been charged with the responsibility of developing a policy that outlines student promotion and retention procedures. This policy must include the following components: a process for parental notification, an appeal process, a method of early identification of students, a plan for early interventions, identifying teachers as responsible for promotion or retention decisions, and adoption of the policy at a public meeting. Once this policy is established and adopted, the LEA should inform the community of the intent and requirements of these policies. When developing this policy, the committee members, including administrators, teachers, parents, and community members shall examine policy for the following academic areas; students in:

1. Second and third grade in reading,
2. Third and fourth grade in reading,
3. Fourth and fifth grade in reading, English language arts, and math,
4. The end of the intermediate grades and the beginning of middle school grades in reading, English language arts, and math, and
5. The end of middle school grades and the beginning of high school in reading, English language arts, and math.

Using these grades and subject areas as indicators, LEAs shall identify students for retention based on the following criteria:

- Standardized Testing and Reporting (STAR) program testing results and the minimum levels of proficiency adopted by the State Board of Education pursuant to Section 60648.
- The student's grade or other indicators of academic achievement designated by the LEA.

Although these are targeted grade levels, students may be retained in any grade if they are not meeting the established criteria for promotion.

Once students who are at risk of retention have been identified, the LEA shall adopt policies and procedures that provide academic interventions for these students. The California Reading Initiative requires minimum amounts of classroom time that must be devoted to the instruction of reading. It is recommended that students with IEPs have additional instruction of 30 to 45 minutes daily. Opportunities might include such activities as supplemental instruction in the form of tutorial programs, before and after-school programs, Saturday classes, summer school programs, intersessions, a combination of activities, and the establishment of a Student Study Team, if not already in existence. These programs are provided in addition to the regular school day activities and curriculum and may not take the student away from classroom instruction in the core curriculum. AB 1639 covers the issue of supplemental instruction and AB 1370 covers summer school funding.

AB 1639 establishes a mandatory summer school program for students in grades 2-9 that have been retained or have low reading, writing, and/or math skills. Participation for students who are retained may be required by the LEA. Participation is determined in the following order: students recommended for retention or at risk of retention, students identified as scoring low in reading, language arts, and/or math, or STAR Program tests results or other evaluative criteria used to identify eligible students. Since attendance is not compulsory, however, parents or guardians may decline to have their student participate in the summer program.

AB 1370 outlines key issues regarding the funding of summer school programs and supplemental instruction. Funding has been specifically allocated for the purpose of funding supplemental instructional and summer school programs that are in accordance with E.C. 37252 and 37252.5. Section 37252 states summer school instruction shall be offered to augment remedial instruction in grades 7-12 for students who have been retained, are at risk of retention, or do not demonstrate sufficient progress toward passing the examination which is a requirement for high school graduation. These programs shall also be offered to 12th grade students who were enrolled in 12th grade the previous school year. Section 37252.5 discusses programs to be offered to students retained in grades 2-9. These programs should be direct, systematic, and intensive supplemental instruction.

To develop interventions for students, the LEA shall involve both parents and teachers. The curriculum of this intensive program should include reading and written expression instruction in the areas of: phonemic awareness, systematic explicit phonics and decoding, word attack skills, spelling and vocabulary, explicit instruction in reading comprehension, writing, and study skills. For those students scoring low in mathematics skills, a systematic and intensive program shall be delivered in this area as well.

The classroom teacher is responsible for the decision to retain or promote a student based on the criteria outlined in the local school district policy. When a student has one or more teachers, the LEA shall designate which ones will be responsible for the decision. If the student meets or exceeds the criteria, the student will be promoted to the next grade. If the student does not meet the criteria, the teacher can select to promote the student based on in-class and other district-wide measurements. If the teacher decides to promote the student, he/she would present a written statement that includes the reason that retention is not warranted and recommendations for interventions to attain an acceptable level of performance. If the final recommendation to promote is based on successful completion of a district intervention program, the student shall be reassessed at the end of the program and the decision to promote or retain would be made at that time. The decision of the teacher shall be discussed with both the parent and principal prior to the decision being finalized.

For parents that do not agree with the decision to retain their student, the LEA shall have an established appeal process. The burden of proof is on the part of the party appealing the teacher's decision.

For students exhibiting high academic achievement, the Superintendent or designee may recommend that a student be accelerated to a grade higher than their current placement. The student's emotional and social growth would be taken in account prior to a decision of this nature being made on behalf of the student.

Section A – Student's with Special Needs

AB 1626 makes no reference to the issue of students with special needs as they relate to retention and promotion. The Individualized Education Program (IEP) document continues to be the critical process in determining the expected level of performance and achievement. Therefore, retention and promotion issues should be topics of discussion at the student's annual IEP meeting. Promotion or retention should be based on the level of mastery expected and achieved on the IEP goals and objectives. The IEP team may develop individual promotion standards within the context of the LEA adopted standards. Individual promotion standards should be developed before the first day of school or at the next IEP meeting. Each of the IEP team members should be aware that individualized promotion standards might not meet the LEA requirements for graduating with a diploma.

Since IDEA 2004 requires that students with disabilities participate in state and district assessment to the greatest extent possible, the LEA is required to ensure that these students are involved in the core curriculum or an alternate curriculum that is based upon core curriculum. If accommodations are necessary for the student to successfully participate in the curriculum or testing, the IEP team should outline these accommodations in the student's IEP. Further information on accommodations and statewide assessment are contained in Chapter 16.

If retention is a possibility for a student with special needs, an IEP meeting should be called as soon as possible. The following should be considered at the IEP meeting:

- Is the current IEP for the student’s academic, linguistic, social, emotional, and behavioral needs appropriate?
- Is the manner of assessment, including any accommodations and modifications, identified in the IEP appropriate?
- Were all the services required by the student to make progress in the general education curriculum appropriately identified in the student’s IEP?
- Did the student receive all the services identified in the IEP?
- Were the linguistic needs of English language learners appropriately identified?
- Was the assessment conducted consistent with the IEP?
- Was the student’s promotion standard appropriate and clarified at the IEP?

If the above questions were answered positively, the student should be required to attend the Intensive Instructional Program developed by the local school board pursuant to *E.C. § 37252.5*. If the summer school program is an option, before the end of the school year, the IEP team should document all supported and related services the student will need to benefit from that program. If the above questions were answered in the negative, the IEP team should determine why such supports were not provided, develop an alternative plan, provide the summer school option, and consider not retaining the student.

Section B – Frequently Asked Questions

Can students in special education be retained?

Yes, however, careful consideration in the development and implementation of the student’s individualized education program should prevent student failure in most cases.

Does the IEP automatically exempt a student from statewide assessment or accountability to content standards?

No, in fact, IDEA specifically requires that students with disabilities be included in statewide assessments and that their progress be reported at least as often as their non-disabled peers. The Act further clarifies that the “general curriculum” is the same as for non-disabled peers, with modifications or accommodations if appropriate, and the historically “low expectations” for students with disabilities will no longer be tolerated. If special education students are exempted from state assessments, the process to exempt must follow general education guidelines. The exemption is recorded in the IEP.

Which special education student can be retained and by what criteria?

All students are subject to the local board-adopted policy on promotion and retention. Within the framework of that policy, IEP teams should consider:

- a. If the special education student receives specific accommodations in the classroom, that student may be entitled to the same accommodations in a testing situation and modified grades.
- b. The IEP team determines what accommodations and modifications are appropriate and are specified in the IEP and clearly communicated to all teachers.
- c. Modified grades are not based on student special education status or placement and are available to all students, not just students with disabilities.
- d. Identification of a modified grade on report cards and transcripts is permissible as long as the student is not identified as a student with a disability and such reporting is available to all students.

Are special education students eligible to participate in the Intensive Instructional or Summer Program if they are at risk of or are being retained?

Yes, however, a student may not participate in two programs at once, for example, Extended School Year under IDEA and the Summer School Program under *E.C. § 37252.5*.

If a student requires a related service (DIS) during the regular instructional day, are those related services required during supplemental instruction, and, does the DIS provider need to be present?

Yes and No. The IEP team will determine what related services are necessary and when. However, in making that decision teams should be aware that IDEA does not guarantee the best educational program, merely a “floor of opportunity” to participate and benefit from the educational program.