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Senate Bill 12 (as enacted)  
Sponsor: Senator Dayna Polehanki  
Senate Committee: Education  
House Committee: Education

**PUBLIC ACT 7 of 2023**

Date Completed: 4-21-23

**RATIONALE**

Public Act 306 of 2016 (also known as the "Read by Grade Three" law) requires the retention of a grade 3 pupil if the pupil is one or more years behind grade level in reading proficiency. Proficiency is measured by a pupil's score on the grade 3 State English language arts assessment, currently the Michigan Student Test of Educational Progress (M-STEP). The Act allows a good cause exemption to be granted under certain circumstances, such as if a pupil has less than three years of instruction in an English language learner program and has limited English proficiency. Some people believe that the Act's default retention requirement unnecessarily punishes students based on their performance on a one-time test, which may have a long-term negative impact on students if they are retained. Accordingly, it was suggested that the default retention requirement be removed.

**CONTENT**

The bill amends the Revised School Code to do the following:

- Delete provisions prohibiting the promotion of a pupil to grade 4 unless the pupil demonstrates a satisfactory reading score, or otherwise demonstrates a grade 3 reading level.
- Delete provisions prohibiting a school district superintendent or public school academy (PSA) chief administrator from allowing a child under 10 years old to enroll in grade 4 unless he or she demonstrates a satisfactory reading score, or otherwise demonstrates a grade 3 reading level.
- Modify a requirement that a school district or PSA provide a reading intervention program that is intended to correct a pupil's specific reading deficiency to specified pupils.
- Modify a requirement that the Center for Educational Performance and Information (CEPI) notify a pupil's parent or legal guardian and school district or PSA if that pupil has a reading deficiency.
- Delete provisions specifying reasons and procedures for granting a good cause exemption from the grade 3 promotion and retention requirements.
- Require a school district or PSA to provide intensive reading intervention to a pupil who has a reading deficiency beyond grade 4 until the pupil no longer has a reading deficiency.
- Delete a provision requiring a school district or PSA to submit a retention report to CEPI.

The bill will take effect on the 91st day after the Legislature adjourns sine die.

## Promotion & Retention of Third Grade Pupils

Under Section 1280f of the Code, all the following provisions apply, beginning with pupils enrolled in grade 3 during the 2019-2020 school year. If a pupil scores poorly on the grade 3 State English language arts assessment, CEPI has to notify that pupil's parent or legal guardian by certified mail. The notification has to state the information specified in the Code, including that, based on standardized testing, the State has determined that the pupil is required to be retained in grade 3 with a reference to Section 1280f along with an explanation that even if the pupil is not eligible to enroll in grade 4 based on State assessments, the pupil may still be allowed to enroll in grade 4 if he or she demonstrates a grade 3 reading level through performance on an alternative standardized reading assessment or through a pupil portfolio.

If a parent or legal guardian received a notification from CEPI, he or she has the ability to request a meeting with school officials to discuss the retention requirement and the standards and processes for a good cause exemption from that requirement; if a parent or legal guardian requests a meeting, the school official to whom the request is made has to ensure that an appropriate school official is made available to the parent or legal guardian for such a meeting.

The superintendent of the school district or chief administrator of the PSA in which the pupil is enrolled has to ensure that a pupil whose parent or legal guardian has been notified by CEPI is not enrolled in grade 4 until one of the following occurs:

- The pupil achieves a reading score that is less than one grade level behind as determined by the Department of Education based on the grade 3 State English language arts assessment.
- The pupil demonstrates a grade 3 reading level through performance on an alternative standardized reading assessment approved by the Superintendent of Public Instruction.
- The pupil demonstrates a grade 3 reading level through a pupil portfolio, as evidenced by demonstrating competency in all grade 3 State English language arts standards through multiple work samples.

If a child younger than 10 years of age sought to enroll for the first time in a school district or PSA in grade 4, the superintendent or chief administrator, as applicable, may not allow the child to enroll in grade 4 unless one of the following occurred:

- The child achieves a grade 3 reading score as determined by the Department based on the reading portion of the grade 3 State English language arts assessment.
- The child demonstrates a grade 3 reading level through performance on an alternative standardized reading assessment approved by the Superintendent of Public Instruction.
- The child demonstrates a grade 3 reading level through a pupil portfolio, as evidenced by demonstrating competency in all grade 3 State English language arts standards through multiple work samples.

If a pupil is not enrolled in grade 4 at the beginning of a school year because of these provisions, then before placing the child in grade 4 during the school year, an appropriate school official of the pupil's school district or PSA must provide written notification to the pupil's parent or legal guardian of the proposed placement.

If a pupil or child demonstrates that he or she is proficient in all subject areas assessed on the grade 3 State assessment other than English language arts, as evidenced by his or her scores on those assessments, and that he or she is proficient in science and social studies as shown through a pupil portfolio and as determined by the teacher who provided the grade 3

instruction to the pupil in science or social studies, as applicable, then the requirements described above do not apply and he or she may be enrolled in grade 4.

For a pupil not promoted to grade 4 or a child not enrolled in grade 4 because of Section 1280f's requirements, and for a pupil or child enrolled in grade 4 because of demonstrated proficiency in all assessed subject areas except English language arts or a pupil or child granted a good faith exemption, the school district or PSA has to provide a reading intervention program that is intended to correct the pupil's specific reading deficiency, as identified by a valid and reliable assessment.

The bill deletes all the provisions described above. Instead, under the bill, except as otherwise provided, for a grade 3 pupil who has a reading deficiency based on the grade 3 English language arts assessment, the pupil's school district or PSA, only through grade 4, will have to provide a reading intervention program that is intended to correct the pupil's specific reading deficiency, as identified by a valid and reliable assessment.

The Code also requires the Department to provide CEPI with the grade 3 State assessment scores for every grade 3 pupil enrolled in a public school in the State that has administered one or more of those assessments, not later than May 23 of each year or not later than 14 days after the finalization of scores, whichever is earlier. Not later than June 1 of each year or not later than 14 days after CEPI received the grade 3 assessment from the Department, whichever was earlier, CEPI has to identify each pupil completing grade 3 who is subject to retention and who is not eligible to enroll in grade 4 due to the Code's provisions and notify the parent or legal guardian and the school district or PSA of these pupils that the pupil is subject to being retained in grade 3.

Under the bill, the Department will have to provide the grade 3 State assessment score for every grade 3 pupil enrolled in a public school in the State who was administered one or more of the assessments scoring for the grade 3 assessments to CEPI after it finalized the scoring. After CEPI receives the grade 3 State assessment results from the Department, it will have to identify each pupil completing grade 3 that year who has a reading deficiency and notify the parent or legal guardian and the school district or PSA of these pupils that the pupil has a reading deficiency. The notification will have to include an explanation concerning what constitutes a reading deficiency and information concerning interventions that are available to the pupil to address the reading deficiency.

#### Good Cause Exemption

Under Section 1280f, if the superintendent of a pupil's school district or chief administrator of a pupil's PSA, or his or her designee, grants a good cause exemption from the retention requirements for a pupil, then a pupil may be promoted to grade 4 without meeting the requirements. A good cause exemption can be granted only for one of the following:

- The pupil is a student with an individualized education program (IEP) or with a Section 504 plan and the pupil's IEP team or Section 504 coordinator, as applicable, makes the decision to exempt the pupil from the requirements based on the team's or coordinator's knowledge of the pupil.
- The pupil is a limited English proficient student with less than three years of instruction in an English language learner program.
- The pupil has received intensive reading intervention for two or more years but still demonstrates a reading deficiency and was previously retained in kindergarten, grade 1, grade 2, or grade 3.
- The pupil has been continuously enrolled in his or her current school district or PSA for less than two years and there is evidence that the pupil had not been provided with an

appropriate individual reading improvement plan by the school district or PSA in which the pupil was previously enrolled.

- The pupil's parent or legal guardian have requested a good cause exemption within the prescribed time period and the superintendent or chief administrator, or his or her designee, determined that the good cause exemption is in the best interests of the pupil.

("Individualized education program" means that term as described in Administrative Rule 340.1721e, which requires an IEP to be developed according to specific Federal regulations and to contain specific statements and describes the responsibilities of an IEP team. "Section 504 plan" would mean a plan under Section 504 of Title 5 of the Rehabilitation Act, which specifies that no otherwise qualified person with a disability may be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program receiving Federal financial assistance.)

If a pupil is promoted to grade 4 due to a good cause exemption, the pupil remains eligible for reading intervention services designed to enable the pupil to achieve proficiency in reading, similar to those provided to pupils in grade 3.

The superintendent of a school district or chief administrator of a PSA, or his or her designee, may grant a good cause exemption only through the procedure described below.

At the request of a pupil's parent or legal guardian or upon the teacher's own initiative, the pupil's grade 3 teacher may submit to the superintendent or chief administrator, or his or her designee, a recommendation for a good cause exemption along with documentation that indicates that a good cause exemption applies to the pupil.

For a pupil enrolled in a school operated by a school district or a PSA, the superintendent of the pupil's school district or chief administrator of the pupil's PSA must review and discuss the recommendation with the pupil's grade 3 teacher and, if the pupil has an IEP, with the pupil's IEP team. After this discussion, the superintendent, chief administrator, or his or her designee must determine whether to grant the good cause exemption for the pupil. This decision is final.

For a pupil for whom a request has been received from the pupil's parent or legal guardian, if the request is received within 30 days after the notification by CEPI, the superintendent of the school district or chief administrator of the PSA, as applicable, or his or her designee, has to review the request and any supporting information and consider whether or not the good cause exemption is in the best interests of the pupil. After this consideration, he or she has to determine whether to grant the good cause exemption. This determination has to be made and communicated to the parent or legal guardian at least 30 days before the first day of school for the school year. This decision is final. The superintendent of the pupil's school district or chief administrator of the pupil's PSA, or his or her designee, has to notify the pupil's parent or legal guardian of the determination and decision.

The bill deletes all the provisions described above.

The Code also requires the school district or PSA of a pupil or child that has been granted a good cause exemption to provide intensive reading intervention for the pupil until he or she no longer has a reading deficiency. Instead, under the bill, for a pupil who has a reading deficiency at the end of grade 4, the pupil or child's school district or PSA will have to provide intensive reading intervention to the pupil beyond grade 4, in a manner determined by the school district or PSA, until the pupil no longer has a reading deficiency.

## Retention Report

By September 1 of each year, a school district or PSA must submit a retention report to the CEPI in the form and manner prescribed by the center. The retention report must contain at least all the following information for the most recent school year:

- The number of pupils retained in grade 3 due to the operation of Section 1280f.
- The number of pupils promoted to grade 4 due to a good cause exemption, disaggregated by each of the specific exemptions.

The bill deletes these provisions.

MCL 380.1280f

### **PREVIOUS LEGISLATION**

*(Please note: The information in this summary provides a cursory overview of previous legislation and its progress. It does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)*

The bill is similar to Senate Bills 199 and 265 from the 2021-2022 Legislative Session. Senate Bill 265 was reported from the Senate Committee on Education and Career Readiness but received no further action.

### **BACKGROUND**

The Michigan Education Assessment Program (MEAP) results for the 2013-2014 academic year indicated that nearly 39% of third-grade students did not meet proficiency standards in reading. The National Assessment of Education Progress (NAEP) test from the same year found that only 30% of Michigan fourth-grade students scored at the "proficient" level, which ranked Michigan 40th in the nation in third-grade reading proficiency.<sup>1</sup> In March 2015, Governor Rick Snyder created the Third-Grade Reading Workgroup to examine Michigan's reading proficiency at the third-grade level and to recommend policy. The Workgroup included the following recommendations in its report:

- Provide diagnostic and screening instruments in every K-3 classroom to measure each student's strengths and weaknesses, accompanied by targeted literacy instruction and interventions by a qualified teacher.
- Provide a reading period of at least 90 minutes a day for all students and additional instructional time for students who are struggling.
- Provide a certified reading specialist and literacy coach to support every student and teacher.
- Provide teacher candidates with the skills and training to effectively teach reading and use diagnostic-driven instruction and interventions.
- Provide school building leaders with leadership skills and early literacy training.
- Promote best-practices research and resources.
- Give every parent the information and supported needed to develop early literacy skills, to parent effectively, and to provide adequate home-support for every student.
- Implement a K-3 "smart promotion" policy to provide targeted interventions in literacy to students who are one or more years behind grade level, while allowing them to continue at grade level in other subjects in which they are proficient.
- Provide a kindergarten initial diagnostic instrument.
- Provide a currently existing, research-based, interim measure of academic progress for K-3.

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<sup>1</sup> "Third-Grade Reading Workgroup Report to Governor Rick Snyder", p. 2, 2015.

-- Establish an independent oversight commission.

Public Act (PA) 306 of 2016 prescribes requirements the Department must meet to help ensure that more pupils achieve a score of at least proficient in English language arts on the grade 3 State assessment, which include approving at least three screening and diagnostic reading assessment systems. A school district or PSA must use an approved assessment system to assess a pupil's progress in reading skills at least three times per school year in grades K-3; school districts and PSAs also must provide reading intervention programs for pupils in grades K-3. PA 306 also requires the retention of a grade 3 pupil if the pupil is one or more years behind grade levels in reading proficiency unless a good cause exemption is granted.

According to a 2022 report from the Education Policy Innovation Collaborative (EPIC) at Michigan State University, roughly 5,650 Michigan students achieved reading scores low enough that could require retention based on results from the 2022 Michigan Student Test of Educational Progress (M-STEP), which replaced the MEAP in 2015. Overall, 5.8% of grade 3 pupils who took the English language arts M-STEP assessment received scores that made them eligible to be retained under PA 306, up from 4.8% in 2021.

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

Instead of helping students academically, default retention negatively impacts students and teachers. According to testimony before the Senate Committee on Education, retention lowers students' confidence, isolates them from their peers, and decreases academic motivation. A report by MSU's Education Policy Innovation Collaborative (EPIC) found that only 25.7% of teachers surveyed believe that retention is an effective intervention for poor-performing students.<sup>2</sup> School principals and superintendents view retention even more negatively. Additionally, teachers may suffer due to retention because they are often blamed for their students' poor performance. Retention should be removed because it harms students and teachers instead of helping them.

#### **Supporting Argument**

Utilizing grade 3 State assessment test scores as the sole determinant for retention fails to consider students' individual circumstances. A variety of factors can affect a student's ability to learn to read, such as economic status or a disability. Retaining a poor-performing student based on one standardized test score may unfairly punish a pupil and prevent him or her from acquiring the support necessary for true success.

The Act does allow exemptions to be made for default retention; however, these exemptions create disparities in retention rates. According to a report from EPIC, during the 2020-2021 school year, school districts were twice as likely to retain Black students than White students, while, during the 2021-2022 school years, districts were 2.4 times as likely to retain Black students than White students.<sup>3</sup> Economically disadvantaged students were more than twice as likely to be retained than their wealthier peers, while low-performing, urban, and charter school districts were more likely to retain students than other types of school districts.<sup>4</sup> A student's race, socio-economic status, or school district should not affect their chances of

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<sup>2</sup> Westall et al. "Read by Grade Three Law Initial Retention Decisions for the 2021-22 School Year", p. 20, Dec. 2022.

<sup>3</sup> *Id.* p. 8.

<sup>4</sup> *Id.* p. 9.

being retained. Default retention under the Act, combined with the disparities in the practice of exempting students, makes the Act inequitable and in need of reform.

### **Supporting Argument**

Repealing the Third Grade Reading Act's retention policy will result in decreased costs to the School Aid Fund. The School Aid budget covers, among other things, the per-pupil foundation allowance, i.e., the base amount of dollars a school district receives in State support per student enrolled. This amount varies; for FY 2022-2023, the target for per-pupil funding is \$9,150. Every grade 3 student retained costs the State an additional year of per-pupil funding. Alternative forms of support offered to struggling students, such as literacy coaching, benchmark testing, and reading improvements plans are less costly per pupil. They also are as effective, if not more so, than retention, as pupils gain the benefits of additional lessons and practice without the social and emotional consequences of retention. Removing default retention and allowing students to access less-costly supports will financially benefit the State.

### **Opposing Argument**

Repealing default retention could lower Michigan's academic standards. The possibility of retention motivates students to learn and holds educators responsible for their work in the classroom. Without it, the State may signal to school districts and students that it has low expectations for reading proficiency. In 2022, Michigan ranked 43rd in the nation in fourth-grade reading, down from 32nd in 2019.<sup>5</sup> Additionally, students are slowly recovering from the academic disruptions caused by the COVID-19 pandemic, with increases in average mathematic and reading scores for grade 3 to grade 8 students generally trailing pre-pandemic norms into the 2021-2022 school year.<sup>6</sup> Due to Michigan's poor national education ranking and the academic fallout of the COVID-19 pandemic, expectations should be kept high so that students succeed.

### **Opposing Argument**

Requiring school districts to provide additional support to poor-performing students instead of retaining them may unduly burden school districts, which are already under-resourced. For example, the State funds literacy coaches for intermediate school districts (ISDs), with \$3 million allocated for ISD Early Literacy Coaches in the 2016-2017 school year; however, many school districts hire and pay district-based literacy coaches with funds not allocated by the Read by Grade Three Law.<sup>7</sup> Requiring that these non-ISD school districts hire more literacy coaches may prove financially burdensome for some school districts. Additionally, according to a report by EPIC, literacy coaches are spread too thin across the State, with district-based coaches reporting they work with an average of 18 teachers across multiple schools and districts, rather than the recommended 14.<sup>8</sup> Removing default retention will increase the workload for educators. Teachers, literacy coaches, and school administrators are not prepared to take on more work and should not be asked to.

**Response:** According to testimony before the Senate Committee on Education, removing retention would reduce the burden teachers and school administrators face. EPIC found that 43% of the teachers and 51.8% of the principals surveyed agreed that the retention process was burdensome.<sup>9</sup> Instead of retention, school districts could turn to outside community organizations, such as religious institutions, for help supporting poor-performing students.

Legislative Analyst: Abby Schneider

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<sup>5</sup> Martin Ackley, "Michigan NAEP Results Reflect National Declines Due to the Pandemic", MDE MI Newswire, Oct. 24, 2022.

<sup>6</sup> Kilbride et al., "Michigan's Fall 2021 Benchmark Assessments", p. vi, April 2022; Kilbride et al., "Michigan's 2020-21 and 2021-22 Benchmark Assessments", p. iii, Oct. 2022.

<sup>7</sup> Cummings et al., "Michigan's Literacy Coaching Landscape," pp. 1-2, March 2023.

<sup>8</sup> *Id.* p. 58.

<sup>9</sup> Westall et al. "Read by Grade Three Law Initial Retention Decisions for the 2021-22 School Year", p. 20, Dec. 2022.

## **FISCAL IMPACT**

The bill will result in decreased costs to the School Aid Fund, compared to current law. If schools hold fewer students back in third grade, that will result in (at least) one fewer year of per-pupil funding for each student not held back, although the fiscal impact on the State will not occur until the first cohort of unretained students reaches the 12th grade. (This would occur in fiscal year (FY) 2033-34 because, initially, students will be counted in a different grade than they otherwise would have been if they had been retained.) For the 2022-23 school year, districts reported retaining 545 students under the Code, which represented 0.6% of all third-grade students. The target foundation allowance for FY 2022-23 is \$9,150 per pupil. If we assume the number of students who would be retained in the 2023-24 school year remained constant, absent this bill, the savings from not retaining those students would be \$5.0 million, as students presumably would graduate one year sooner and would require one fewer year of foundation allowance funding. However, this is based on current-year foundation allowances; the fiscal impact will change based on the foundation allowance in place for FY 2033-34, when the reduced year of instruction will begin to decrease School Aid Fund expenditures. The lower cost will continue for each school year beginning in FY 2033-34 because statewide enrollment will decrease by the average number of students no longer retained.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.