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Member Alert

AB 104: RETENTION, GRADE CHANGES, AND GRADUATION REQUIREMENTS

On July 1, 2021, Governor Newsom signed AB 104 as an urgency statute effective immediately. As discussed for several months, this legislation addresses students that fell behind during the 2020-2021 school year due to school closures and are requesting retention. AB 104 adds three sections to the Education Code creating new policies for retention, grade changes, and graduation requirements.

A. Education Code section 48071 – Retention

This section supplements existing retention policies, but does not replace it and only covers requests for retention based on the 2020-2021 academic year. For a student to be eligible for retention under Education Code section 48071, the student must have received deficient grades for at least one-half of the student’s 2020-2021 coursework. A deficient grade is defined as “D,” “F,” “No Pass,” or equivalent as determined by the local education agency (“LEA”). A student in the 12th grade during the 2020-2021 school year is not eligible for retention pursuant to this section.

The parent of an eligible student must submit a written request to the district requesting retention. Within 30 days of receipt of the request, the district must offer consultation to the parent regarding retention. The consultation shall include the participation of the parent(s), student, administrator, and teacher. The following information must be included in the consultation:

1. Discussion of all available learning recovery options, including:
 - a. Specific interventions and supports pursuant to Part 24.6 of Division 3¹; and

¹ See Education Code sections 43520-43525; In Person Instruction and Expanded Learning Opportunities Grants.

b. Access to prior semester courses in which the student received a “D” or “F” letter grade in the 2020-2021 academic year, some other form of credit recovery, or other support pursuant to Education Code section 51225.²

2. Consideration of the student’s academic data and any other information relevant to whether retention is in the student’s best interests, academically and socially.

3. Discussion about research on the effects of student retention and the types of interventions and supports that have shown to be beneficial to students.

If the student is a special education student, the district must ensure that their decision to retain a student is consistent with the student’s Individualized Education Program (“IEP”).

The LEA must notify the parent of its final retention decision within 10 calendar days of the consultation described above. If the student is retained, he or she must be offered supplemental interventions and supports pursuant to Part 24.6 of Division 3.

If a retention request is denied, the student must be offered:

1. Specific interventions and supports pursuant to Part 24.6 of Division 3; and

2. Access to prior semester courses in which the student received a “D” or “F” letter grade in the 2020-2021 academic year, some other form of credit recovery, or other supports pursuant to Education Code section 51225.³

B. Education Code section 49066.5 – Grade Changes

This section allows the parent, guardian, holder of education rights, or student 18 years old that attended high school during the 2020-2021 school year to apply to the LEA to have a letter grade, as reflected in the transcript, changed to a “Pass” or “No Pass” grade. Please note there are no requirements as to the grade to be changed (i.e., it did not have to be a “D” or “F”). The LEA must grant this request, notwithstanding any other law.

The section also sets requirements for the LEA:

1. Subject to the limitations described above, the LEA may not limit the number of types of courses eligible for a grade change pursuant to this section.

² This section is another section added by AB 104 addressing accommodations for students in their third or fourth year of high school. See description below.

³ Unlike Section 49066.5, this section does not contain any mandated notifications. It is recommended that the district follow pre-existing policies regarding notification of a new district policy. Specifically, as this is a supplemental retention policy, the district should follow pre-existing retention policies regarding parental and student notification.

2. The grade change may not negatively affect the student's grade point average.
3. Notwithstanding any other provision of law, the grade change may not result in the forfeiture of the student's eligibility or entitlement to state or institutional financial aide.

In regards to college acceptance, this section mandates that California State University institutions accept the "Pass" or "No Pass" mark without prejudice for admission purposes for any student enrolled in any California high school from the 2020-2021 school year to the 2023-2024 school year. University of California institutions and private post-secondary institutions are "encouraged," but not required, to accept the "Pass" or "No Pass" mark without prejudice. Post-secondary institutions must inform the California Department of Education ("CDE") of their compliance within 15 days of the operative date of July 1, 2021. Within 20 calendar days of the operative date of July 1, 2021, CDE will post a list of post-secondary institutions that have indicated their compliance.

Within 15 calendar days of the operative date of July 1, 2021, CDE must provide an application template for LEAs to use for grade change requests.

Within 15 days of posting the template by CDE, the LEA serving high school students must give notice on their website and provide written notice to its students and parents/guardians of the grade change option available to them. The written notice must include:

1. The application to request a grade change;
2. The list of post-secondary educational institutions that will comply; and
3. A statement that some post-secondary institutions, including those out of state, may not accept a "Pass" or "No Pass" grade.⁴

Students must submit their application for a grade change within 15 calendar days of the LEA's posting and provide written notice of the ability to request a grade change. The statute specifically directs that LEAs not accept applications for grade change outside of the 15 calendar day timeline.

The LEA shall change the transcript and notify the student or parent within 15 days of receiving the application requesting a grade change. The LEA may not unilaterally change a student's grade. It may only be changed by application of the student or parent/guardian.

⁴ It is important to note that this notification must include out-of-state post-secondary institutions, as California education law is not binding on other states.

C. **Education Code section 51225 – Graduation Requirements**

This section requires the LEA to exempt students who are in their third or fourth year of high school and not on track to graduate in four years during the 2020-2021 school year from all coursework and other requirements adopted by the LEA's governing board in addition to Education Code section 51225.3.⁵

This section also requires the LEA to allow students who are in their third or fourth year of high school in the 2020-2021 school year and not on track to graduate in either 2020-2021 or 2021-2022 to provide an opportunity for those students to complete the coursework required by Section 51225.3. Those opportunities may include, but not be limited to:

1. Completion of the coursework through a fifth year of instruction;
2. Credit recovery; or
3. Other opportunity to complete the required coursework.

This legislation does not address eligibility to play sports. It appears that the California Interscholastic Federation age requirements are not affected and students may not play sports if they reach their 19th birthday prior to June 15. If the student plays any sport, this issue should be discussed in the consultation described in Section 48071.

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.

⁵ This section lists state requirements for a high school diploma.